

EXHIBIT D

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*,) June 12, 2019
)
and)
)
)
Puerto Rico Electric)
Power Authority,)
)
Debtors.)

In Re:) Docket No. 3:17-BK-3566 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
Employees Retirement System)
of the Government of the)
Commonwealth of)
Puerto Rico,)
)
Debtor.)

1
2 In Re:) Docket No. 3:17-BK-3567 (LTS)
3)
4) PROMESA Title III
5 The Financial Oversight and)
6 Management Board for)
7 Puerto Rico,) (Jointly Administered)
8)
9 as representative of)
10)
11 Puerto Rico Highways and)
12 Transportation Authority,)
13)
14 Debtor.)

9
10 In Re:) Docket No. 3:17-BK-4780 (LTS)
11)
12) PROMESA Title III
13 The Financial Oversight and)
14 Management Board for)
15 Puerto Rico,) (Jointly Administered)
16)
17 as representative of)
18)
19 Puerto Rico Electric)
20 Power Authority,)
21)
22 Debtor.)

17
18 OMNIBUS HEARING
19 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
20 UNITED STATES DISTRICT COURT JUDGE
21 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN
22 UNITED STATES DISTRICT COURT JUDGE
23
24
25

1 APPEARANCES:
2 For The Commonwealth
of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV
3 Mr. Paul Possinger, PHV
Ms. Laura Stafford, PHV
4 Mr. Gregg M. Mashberg, Esq.
5 For the U.S. Trustee
Region 21: Ms. Monsita Lecaroz Arribas, AUST
6 For Official Committee
7 of Unsecured Creditors: Mr. Luc A. Despins, PHV
8
9 For Puerto Rico Fiscal
Agency and Financial
Advisory Authority: Mr. Peter Friedman, PHV
10
11 For Financial Guaranty
Insurance Company: Mr. Martin Sosland, PHV
12 Mr. Jason Callen, PHV
13 For Ad Hoc Group of
General Obligation
14 Bondholders: Mr. Mark T. Stancil, PHV
15
16 For Ambac Assurance
Corporation: Ms. Atara Miller, PHV
17 For Association of
the Puerto Rico
18 Judiciary: Mr. David Indiano Vicic, Esq.
19 For Ad Hoc Group of
Constitutional
20 Debtholders: Mr. Andrew Kissner, PHV
21 For Syncora Guarantee: Mr. Carlos Rodriguez Vidal, Esq.
22 For Windmar Renewable
Energy, Inc., et al.: Mr. Fernando Agrait Betancourt, Esq.
23
24 For National Public
Finance Guarantee: Mr. Robert Berezin, PHV
25

1 APPEARANCES, Continued:

2 For AmeriNational
3 Community Services,
4 LLC: Mr. Nayuan Zouairabani, Esq.

5 For U.S. Bank
6 National Association: Mr. Clark Whitmore, PHV

7 For Assured Guaranty
8 Corporation and Assured
9 Guaranty Municipal
10 Corporation: Mr. William Natbony, PHV

11 For Union de
12 Trabajadores de la
13 Industria Electrica y
14 Riego, Inc.: Mr. Rolando Emmanuelli Jiminez, Esq.

15 For Sistema de Retiro
16 de los Empleados de la
17 Autoridad de Energia
18 Electrica: Ms. Jessica Mendez Colberg, Esq.

19 For the Official
20 Committee of Retired
21 Employees of the
22 Commonwealth of
23 Puerto Rico: Mr. Robert Gordon, PHV

24 For Cortland Capital
25 Market Services, LLC: Mr. Emil Kleinhaus, PHV

For the Fee Examiner: Mr. Brady Williamson, Fee Examiner
Ms. Katherine Stadler, PHV

Additional speakers: Mr. Jay Herriman
Mr. Carlos Cintron Garcia

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27 CAT.

1	I N D E X	
2	WITNESSES:	PAGE
3	None offered.	
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5	EXHIBITS:	
6	None offered.	
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1 San Juan, Puerto Rico

2 June 12, 2019

3 At or about 9:29 AM

4 * * *

5 COURTROOM DEPUTY: The United States District Court
6 is now in session. The Honorable Laura Taylor Swain
7 presiding, also sitting, Magistrate Judge Dein. God save the
8 United States of America and this Honorable Court.

9 THE COURT: Again, good morning. Welcome counsel,
10 parties in interest, and members of the public and press here
11 in San Juan, those observing here and in New York and to the
12 telephonic participants. As always, it is good to be back
13 here.

14 I would like to note that we are also joined this
15 morning here in San Juan by the District Court Executive and
16 Clerk of Court of the Southern District of New York, Ed
17 Friedland and Ruby Krajick, and also Lisa Ng, who is regularly
18 my courtroom deputy in New York. And we're pleased to be
19 together here. And of course, our own Clerk of Court of the
20 District of Puerto Rico is here as well, Frances Rios de
21 Moran.

22 I will remind you, and this is my usual speech about
23 devices, but I make it every time because it's a serious
24 speech. So consistent with court and judicial conference
25 policies and the Orders that have been issued, there is to be

1 no use of any electronic devices in the courtroom to
2 communicate with any person, source, or outside repository of
3 information, nor to record any part of the proceeding. Thus,
4 all electronic devices must be turned off unless you are using
5 a particular device to take notes or to refer to notes or
6 documents already loaded on the device.

7 All audible signals, including vibration features,
8 must be turned off. And no recording or retransmission of the
9 hearing is permitted by any person, including but not limited
10 to the parties or the press. Anyone who is observed or
11 otherwise found to have been texting, e-mailing or otherwise
12 communicating with a device from the courtroom, whether here
13 or in New York, during the court proceeding, will be subject
14 to sanctions, including but not limited to confiscation of the
15 device and denial of future requests to bring devices into the
16 courtroom.

17 Our overall timetable today is until noon, and then
18 from 1:00 until 5:00. Now, before we begin our proceedings
19 with the usual status report, I want to observe that my status
20 over the last few days and up through last night and early
21 this morning has included fielding voluminous, substantive
22 last minute filings on issues that could and should have been
23 foreseen and cued up in a more orderly and efficient fashion.

24 My time, Judge Dein's time and that of court staff
25 has been called upon in ways that are, frankly, highly

1 inefficient. And I am certain that litigation costs to the
2 estate have been multiplied by the staffing required to churn
3 out pages on short notice. This must not be the norm. In the
4 future, I will expect that matters for an Omni will be briefed
5 in accordance with the Case Management Order, and that any
6 later filings will be limited to requests to adjourn matters
7 to permit orderly briefing and consideration of additional
8 issues, or notices that matters have been resolved
9 consensually. And I will not look kindly on urgent motion
10 practice that could have been avoided by forethought.

11 One final note in this connection is that status
12 reports and informative filings are not appropriate vehicles
13 for initiating contested matters or requests for court action.
14 And with that, let's begin the status report of the Oversight
15 Board.

16 Mr. Bienenstock.

17 MR. BIENENSTOCK: Good morning, Judge Swain.

18 THE COURT: Good morning.

19 MR. BIENENSTOCK: Martin Bienenstock of Proskauer
20 Rose for the Oversight Board.

21 Your Honor identified five topics for the status
22 report and I will take them in order. In terms of the general
23 status and activities of the Oversight Board, PROMESA Section
24 202 requires that certified budgets be in place by June 30 of
25 each year for the fiscal year beginning July 1.

1 Therefore, working backwards from June 30, the
2 Oversight Board must proceed, as required by PROMESA sections
3 201 and 202, to have certified fiscal plans and budgets in
4 place by June 30. Therefore, that has been a major activity
5 the last several months and will continue that way through
6 June 30.

7 Simultaneously, the Oversight Board has engaged in
8 negotiations with numerous constituencies that will vote on
9 any Commonwealth plan. These negotiations are all very
10 sensitive, constructive and in different stages.

11 The ones I can report on are as follows: We are
12 pleased to inform the Court this morning that the Oversight
13 Board and the Retiree Committee have formulated a mutual
14 agreement and solution to the treatment of accrued pension
15 benefits in this case. The Oversight Board recently entered
16 into a Plan Support Agreement with the Retiree Committee
17 regarding this agreement, which includes the Retiree
18 Committee's support for a Commonwealth Plan of Adjustment that
19 contains the substance of the agreement we reached. The
20 Retiree Committee announced the agreement by press release
21 earlier this morning.

22 THE COURT: I saw the report.

23 MR. BIENENSTOCK: In summary, the total claims
24 provide that -- the total claims and bonus payments
25 prepetition will be reduced by up to 8.5 percent under a Plan

1 of Adjustment for the Commonwealth. I say up to 8.5 percent
2 because we've agreed to a floor of 1,200 dollars per month,
3 below which no retiree's benefit will be reduced. Those whose
4 total monthly benefit is already under 1,200 a month will not
5 incur any reduction at all.

6 There will also be a restoration of cut benefits in
7 the years the Commonwealth has a surplus and outperforms the
8 fiscal plan. The agreement also calls for reserve to be
9 funded from budget surpluses in the first eight years
10 following plan confirmation, and segregated for payment of
11 pensions as needed in future deficit years.

12 The Oversight Board believes this solution achieves
13 needed savings for the Commonwealth while providing greater
14 security for retirees going forward and is an instrumental
15 component of a Plan of Adjustment for the Commonwealth.

16 I can also announce that the Oversight Board has
17 executed a plan support agreement with the Union, AFSCME, for
18 a new collective bargaining agreement and treatment of claims
19 arising from the existing CBA, which will be rejected; and
20 also engineered a deal and principles with the AFT, American
21 Federation of Teachers, for a similar plan support agreement
22 that remains subject to a member vote taking place today.
23 Both unions have announced these agreements by press release
24 in the last week or two.

25 The two union deals have special significance. It is

1 critical that negotiations with unions result in win-win
2 situations. The workers are the backbone of the Commonwealth
3 and must be fairly compensated, while the other components of
4 collective bargaining agreements need to be adjusted to create
5 efficiencies and be sustainable in the 21st century.

6 Both unions, officers and advisors have been the
7 brightest, most dedicated and most enlightened people you can
8 find. They fiercely advocated their members' rights while
9 recognizing that new collective bargaining agreements need to
10 be affordable and structured for long term. They acted like
11 statesmen and stateswomen, not politicians, and the Board
12 appreciates what they did for their members and for the
13 Commonwealth.

14 Your Honor, there are two other very significant
15 negotiations in progress. There are several other very
16 significant negotiations in progress, and except for one I
17 will identify, I can only say we hope there will be further
18 announcements such as the ones I've made in coming weeks.

19 The one additional negotiation I can identify was
20 made public by Syncora in the Joint Status Report dated June
21 7, 2019, docket number 1294, concerning the PREPA RSA. At
22 page 23 of the status report, Syncora writes it has recently
23 made progress to enable it to become a part to the RSA subject
24 to certain issues. We hope and think those issues will be
25 resolved in the next few days.

1 Finally, the Oversight Board has continued its
2 investigations into the Commonwealth's cash and cash systems,
3 and has continued urging the powers that be in Washington,
4 D.C., to provide cash and create investment incentives to and
5 for the benefit of the Commonwealth.

6 Judge Swain, in respect of the anticipated filing
7 dates of the Proposed Commonwealth Disclosure Statement and
8 Plan, I can report the Oversight Board hopes to file them
9 within the next 30 days. The number of moving parts are
10 preventing me from making promises, but 30 days is the current
11 intent.

12 In respect of the timing and use of mediation in
13 facilitating confirmation of the plan, I can report we have
14 one mediation scheduled in the near term. And the Board will
15 be open to mediation with all groups who ultimately have not
16 agreed in advance to the proposed plan that gets filed.

17 The Court asks for a response to the GO bondholders
18 assurance certification that clawback actions and the Bond
19 Invalidation Act are contingent, and a clarification of the
20 Oversight Board and Creditors' Committee's positions with
21 respect to ripeness of such litigation.

22 Before I provide the response, I want to note that
23 the Oversight Board hopes its proposed plan of adjustment will
24 propose settlements of the invalidation actions that may
25 eliminate the need for them or reduce their scope

1 significantly. In terms of the actions requesting return of
2 principal and interest payments made on invalid debt, those
3 actions had to be filed when they were filed to avoid statute
4 of limitations issues. But as the Creditors' Committee said
5 at the time, they should be stayed until we know which debt,
6 if any, is invalidated.

7 The invalidation objections are not contingent, but
8 the GO bondholders' motion raises an issue of -- a logistical
9 issue that may bear on how the Court determines to handle
10 these actions. Every holder of debt sought to be invalidated
11 may raise as a defense certain prior issued debt was invalid,
12 therefore -- thereby creating more debt capacity to make
13 subsequent debt valid.

14 They can raise that defense concerning any defendant
15 regardless of whether the Oversight Board or Creditors'
16 Committee has sought to invalidate the debt raise as a
17 defense. To avoid inconsistent rulings, the invalidation
18 rules should probably be consolidated for trial, and notice
19 should be given to all parties when appropriate about all the
20 debt that may be attacked.

21 By suggesting this, I want to acknowledge that the
22 invalidation of previous debt may make no difference as to
23 whether other subsequent debt is invalidated, and the
24 Oversight Board takes no position on that contention at
25 present.

1 Insofar as the update regarding the Oversight Board's
2 plans with respect to the anticipated July 15, 2019, issuance
3 of the First Circuit mandate -- well, prior to July 15, the
4 Board will be requesting the First Circuit and/or the United
5 States Supreme Court to issue a further stay. The United
6 States Department of Justice may also request a stay.

7 President Trump announced he will propose the
8 existing board members to the Senate, and we believe that
9 should happen any day now and would buttress any of the
10 requests for a stay.

11 Your Honor, subject to the Court's questions, that is
12 the status report.

13 THE COURT: Thank you, Mr. Bienenstock.

14 MR. BIENENSTOCK: Thank you.

15 THE COURT: I see Mr. Friedman is standing.
16 Mr. Stancil. So let's see. Mr. Stancil, you're closest to
17 the aisle. Thank you.

18 MR. STANCIL: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. STANCIL: Mark Stancil for the Ad Hoc GO Group.

21 I'd like to request the Court's permission to file a
22 short response to the update on the contingency of the claims.
23 Mr. Bienenstock said that the claims against these other bonds
24 are not contingent. He didn't offer any explanation as to how
25 that could be.

1 Count I of these clawback actions, which are directed
2 to more than just the bond -- the 2012s, 2011s and 2014s that
3 have been formally subject to a claim objection, Count I, for
4 example, on the PBA clawback action, Count I says those bonds
5 are null and void. So either they're null and void or they're
6 not, but just saying it's not a contingent claim objection --
7 I think we'd like the opportunity to say, explain why it is
8 just as contingent, if not more so, than the position they
9 took when we filed a few months ago.

10 And also, Mr. Bienenstock suggested that all of the
11 bonds should be given notice and put in consolidation for
12 trial. I would like to say that is precisely what we proposed
13 in April, and they opposed at the time.

14 I'd like to lay this out for Your Honor, if I could,
15 in maybe five pages. If I could. Would that be acceptable?

16 THE COURT: Well, what I'd ask you to do, since
17 Mr. Bienenstock responded orally, as I requested him to do
18 given the timing and that we were going to have this Omni, I
19 think a meet and confer and a decision either on a joint
20 statement of the mutual positions or responsive, short
21 statements, please, would be a more orderly way to get the
22 information to me.

23 And so if you can get that all done by, say, the end
24 of next week, that would be acceptable to the Court.

25 MR. STANCIL: Thank you, Your Honor. That would be

1 | excellent.

2 | THE COURT: Thank you.

3 | Yes, sir.

4 | MR. GORDON: Good morning, Your Honor. For the
5 | record, Robert Gordon of Jenner & Block for the Official
6 | Retiree Committee.

7 | THE COURT: Good morning, Mr. Gordon.

8 | MR. GORDON: Good morning, Your Honor. Thank you.

9 | On behalf of the Retiree Committee, I wish to confirm
10 | the comments of Mr. Bienenstock and confirm that the Retiree
11 | Committee and Oversight Board have entered into a plan support
12 | agreement regarding the proposed treatment of the claims of
13 | Puerto Rico's retirees who participated in the Government
14 | Employee Retirement System, the Teachers Retirement System and
15 | the Judiciary Retirement System under a prospective Puerto
16 | Rico Plan of Adjustment to be filed and submitted to the Court
17 | for consideration.

18 | We believe this Plan Support Agreement is
19 | significant, extremely significant in this case, and provides
20 | a cornerstone for a plan of adjustment for Puerto Rico, which
21 | will enable Puerto Rico to emerge from this Title III process
22 | and focus on the brightness of its economic future, rather
23 | than the darkness of its current financial predicament.

24 | I realize this is not a Rule 9019 settlement hearing
25 | or confirmation hearing, but if I may, knowing this is going

1 to raise more questions than it answers, I'd like to explain a
2 little to the public, as well as the Court, why and how we
3 arrived at this significant agreement.

4 To be clear, the Retiree Committee does not believe
5 there is any mandate under the applicable law or the facts of
6 this case for any cutting or modification of pension benefits.
7 However, the Retiree Committee recognizes that others, in good
8 faith, can harbor a different view. And in this regard, the
9 Retiree Committee further recognizes that the Oversight Board
10 has clearly and consistently expressed the viewpoint that
11 pension cuts are necessary to achieve a confirmed plan of
12 adjustment for Puerto Rico.

13 Against this backdrop, the Retiree Committee has
14 taken the view that its fiduciary duties required it to, in
15 the first instance, engage in negotiations with the Oversight
16 Board and explore a consensual resolution rather than simply
17 decline negotiations, insist on no cuts, and assume the risks
18 of litigating such matters. So the Retiree Committee indeed
19 engaged in extensive and intensive negotiations with the
20 Oversight Board over many, many, many months.

21 I emphasize that because that hard work by the
22 Retiree Committee's members and professionals and the
23 Oversight Board's members and professionals is work that
24 doesn't get reported in the papers, in the media. It's not
25 visible to the public. But let there be no doubt about the

1 extremely hard work that was done by both parties to reach
2 this agreement over a long period of time.

3 And the result of the parties' efforts, Your Honor,
4 is that Plan Support Agreement that we believe is highly
5 favorable in its proposed treatment of retirees. A few
6 highlights, if I may. Mr. Bienenstock has referenced some of
7 them already.

8 It is important to recognize that the Oversight
9 Board's proposed treatment of pensions under its various
10 iterations of its certified fiscal plan originally
11 contemplated cuts for retirees holding monthly pension
12 benefits of just 1,000 dollars, or just 600 dollars if they
13 also received Social Security. Under the Plan Support
14 Agreement with the Retiree Committee, Social Security benefits
15 will not be subject to a cut at all, and the threshold for
16 cuts has been raised to 1,200 dollars a month, as
17 Mr. Bienenstock has indicated.

18 This vastly -- this provides vastly greater
19 protection for the most vulnerable retirees in our community.
20 It increases the percentage of retirees who will receive no
21 cut under a plan of adjustment from roughly 25 percent to
22 fully 61 percent of all retirees, and in absolute numbers, it
23 increases the number of protected retirees from 45,000 to
24 approximately 102,000 retirees.

25 The original proposal in the fiscal plan also

1 contemplated team progressive pension cuts with some
2 pensioners receiving cuts of approximately 25 percent. Under
3 the Plan Support Agreement, the maximum cut to any pensioner
4 is capped at a maximum of 8.5 percent, reducing the top level
5 cut by roughly two-thirds.

6 The Plan Support Agreement also reflects a concern
7 regarding the security and assurance of future payments to
8 retirees under the Pay-Go system. I want to emphasize that
9 this was a mutual concern of the Retiree Committee and the
10 Oversight Board. The Retiree Committee suggested a mechanism
11 for creating a pension reserve and has taken the lead in
12 designing that pension reserve mechanism, and the Oversight
13 Board was receptive from the beginning.

14 Those -- the terms of that pension reserve are
15 included in the term sheet attached to the Plan Support
16 Agreement. Details of it are still being negotiated, to some
17 extent, and will come out in the future. The agreement also
18 protects the monthly medical insurance benefits for all who
19 receive that.

20 As Mr. Bienenstock referenced, there's also a benefit
21 restoration mechanism. So if the economy of Puerto Rico
22 substantially outperforms projections, there is the
23 opportunity for restoration of pension cuts in any given year
24 in which that overperformance occurs. Also, to give
25 pensioners time to prepare for any possible cuts, there will

1 be no modification of pensions until at least July 1 of 2020.

2 THE COURT: You said 2020?

3 MR. GORDON: 2020, Your Honor. Yes.

4 THE COURT: Thank you.

5 MR. GORDON: Your Honor, there's also under
6 negotiation, but -- the concept has been referenced and is
7 still under negotiation, but is referenced in the Plan Support
8 Agreement of the creation of an independent board pursuant to
9 the Plan of Adjustment itself, consisting of retirees elected
10 by retirees to supervise the implementation of pension
11 reserve, the benefit restoration calculation, and payments
12 under the Pay-Go system and general compliance with the Plan
13 terms as they pertain to retirees.

14 We recognize that some have argued that fully
15 protecting pensions from any cuts is a desirable goal and we
16 agree. And to that end, the Plan Support Agreement that we
17 are discussing today more than doubles the number of retirees
18 receiving no cuts.

19 And what we have said to parties that might criticize
20 the fact that there are cuts that are contemplated is that if
21 those parties can persuade the Oversight Board, the only
22 entity that can file a plan in this case, to propose a plan
23 with better treatment, we would welcome that. But we do not
24 see a path to such a result, and only a path that involves a
25 very substantial risk of backfiring and resulting in

1 | devastatingly worse treatment of pensions.

2 | We do not take lightly any cuts to pensions. We are
3 | not pleased that cuts are contemplated; but we believe that we
4 | have acted prudently and consistently with our fiduciary
5 | duties to minimize the impact of this case on retirees and
6 | have achieved a highly favorable result in light of the
7 | circumstances.

8 | Thank you, Your Honor.

9 | THE COURT: Thank you, Mr. Gordon.

10 | And I will call on Mr. Friedman, but I also just want
11 | to thank and congratulate all concerned on the progress that
12 | has been made so far. All of these proposals and agreements
13 | will obviously be subject to litigation and will need to be
14 | brought before the Court, and some of them may well be
15 | opposed. And the Court will make determinations on them. But
16 | having proposals to focus on in aid of moving toward a plan of
17 | adjustment is a very significant step indeed, and that step
18 | appears to be taken on various fronts. And so again, I thank
19 | you for these presentations.

20 | Mr. Friedman.

21 | MR. FRIEDMAN: Good morning, Your Honor. Peter
22 | Friedman on behalf of AAFAF and Governor Rossello.

23 | To end the suspense, we will be opposing. And that's
24 | probably the last funny thing that can be said about pensions.
25 | Look, Your Honor, I think, as you know, over the last two

1 | years, the government has shown a lot of leadership both in
2 | Title III, Title VI, working with the Oversight Board, trying
3 | to reach creditors consensus. We take the last line -- I
4 | think it was the last lines of your CTO opinion seriously
5 | about the need for constructiveness, and I think we've
6 | demonstrated that over and over again.

7 | But with respect to the two announcements today, we
8 | can't support them and feel like we have to oppose them for a
9 | variety of reasons. Obviously the pension cut issue strikes
10 | at the government's responsibility to protect very vulnerable
11 | citizens, and with respect, I think something I hadn't really
12 | focused on before, an aspect of the pension agreement creating
13 | some independent board, as well as the agreement with the
14 | unions to effectively negotiate a new CBA, are things that we
15 | believe are even greater intrusions on the protected powers of
16 | the government than the CTO motion.

17 | We believe those, simply put, exceed the Oversight
18 | Board's powers under Title I, II or III, to engage in those
19 | kinds of transactions which severely trounce on the rights of
20 | the government to engage in a collective bargaining agreement
21 | as the actual employer, to set educational policy as the
22 | actual employer of the Commonwealth's teachers, to oversee
23 | funds to be apparently put in potentially some kind of trust.
24 | Those are core governmental responsibilities and not things
25 | that can be taken away from the government in our view. And

1 as things go forward, we will affirmatively make our case on
2 those points.

3 With respect to retiree pension cuts, Your Honor, I
4 think what we note is -- the whole history of retirement
5 issues is that pensioners have seen cost of living adjustments
6 and freezes for years. And we're not living in a zero
7 inflation environment. So people have seen, retirees have
8 seen their standard of living erode, and we believe this does
9 so to an even greater extent. And we will, you know, in
10 certain cases deprive people of up to 300 dollars a year. For
11 people living on a fixed income, we think that's meaningful
12 and is going to force choices on people that can be avoided.
13 And can be avoided, I think, given -- particularly if you look
14 at the seven fiscal plans that have been certified over the
15 years.

16 They show that the government, through the leadership
17 of this Governor, and the economic growth that we've seen
18 here, has enough money not to make these cuts. We think these
19 cuts -- the Commonwealth has been successful in implementing
20 substantial cost saving measures. It's generating sufficient
21 cash flows to pay its Pay-Go obligations. The Commonwealth
22 has assumed those liabilities, and we think it has a moral
23 obligation and capacity to keep paying them. And we're
24 particularly troubled by the idea that pension cuts could be
25 made available to bolster off-island creditor recoveries when

1 it's not necessary.

2 The projected surpluses under the most recent fiscal
3 plan has increased to 22 billion dollars. We think that's
4 enough certainly to cover the pension cuts, which I -- the net
5 present value of those cuts is tiny and can easily be covered
6 through choices the Board can make. And we believe, frankly,
7 there is no legal ability to make those cuts in light of Act
8 106, which created post-petition obligations by the Oversight
9 Board to make those payments.

10 Your Honor, with respect to -- you know, I think,
11 again, I think the critical issue here is you -- if Mr. Gordon
12 and Mr. Bienenstock said something like 61 percent of
13 pensioners won't have to address cuts, but that leaves, we
14 believe, approximately 55,000 retirees who do. And we think,
15 from a legal and moral and economic perspective, we have the
16 obligation to protect those rights as substantially as
17 possible. And we will do that as this process unfolds.

18 Again, we are mindful and we will remain mindful of
19 the admonition to be constructive. I think you will hear
20 shortly Ms. McKeen and Proskauer and the Board's PREPA teams
21 work hand in hand. We're continuing to move forward on that,
22 but this is fundamental.

23 Your Honor, that raises critical issues, and I can't
24 be anything less than candid with you from the front that the
25 Board and -- Your Honor, we are at different positions with

1 | respect to these cuts and CBA. Thank you.

2 | THE COURT: Thank you. And I do appreciate your
3 | candor.

4 | Mr. Sosland.

5 | MR. SOSLAND: Good morning, Your Honor.

6 | THE COURT: Good morning.

7 | MR. SOSLAND: Martin Sosland of Butler Snow on behalf
8 | of Financial Guaranty Insurance Company.

9 | Not to announce the pension settlement -- we'll
10 | review and respond if appropriate in due course, but to just
11 | respond to a couple things that Mr. Bienenstock said, and one
12 | comment by the Court relating to the fact that matters may
13 | need to be brought before the Court and litigated, there are
14 | critical issues in these cases, as critical as the
15 | Commonwealth-COFINA settlement that the Court previously
16 | approved in the case, relating to whether certain funds,
17 | revenue streams are property of which covered entity under
18 | PROMESA.

19 | Those issues have been teed up in litigation brought
20 | by the Oversight Board and the UCC that is being -- for which
21 | stays are being sought to that litigation, and that will be
22 | addressed before Judge Dein this afternoon.

23 | THE COURT: Yes. That is on the agenda.

24 | MR. SOSLAND: But the point is whenever -- those
25 | issues will have to be either litigated or settled before any

1 plan of adjustment can be confirmed by Your Honor. And that
2 will affect timing.

3 And we heard in the retiree settlement -- the only
4 comment I'll make about it, issues about what might happen in
5 2020, and we've seen reports from -- that Ms. Jaresko has
6 stated, that she expects that a plan of adjustment for the
7 Commonwealth will be effective as of January 1, 2020. Only if
8 those issues are resolved by either settlement, as would be
9 the norm, and in a complex restructuring, or by litigation,
10 are those dates possibly at all relevant.

11 And although we've heard comments about negotiations
12 with constituencies in the cases, and we note the retirement
13 deal and announcements related to PREPA, et cetera, with
14 respect to the entities that have an interest in the revenue
15 streams at interest, there have been either no negotiations
16 since the commencement of these cases or no negotiations under
17 the auspices of the mediator or otherwise in well over a year.

18 And unless those discussions go forward, or we're
19 litigating full blast before Your Honor, and to whatever
20 extent it's delegated before Judge Dein, then I don't see that
21 anything is going to be going effective in 2020, or perhaps
22 for several years later. And we need to engage in those
23 discussions. Thank you.

24 THE COURT: Thank you.

25 And Mr. Bienenstock, I am taking you at your word

1 that there is desire and willingness to actually engage with
2 parties expected to oppose the plan that you intend to
3 propose.

4 MR. BIENENSTOCK: Absolutely, Your Honor. I said it
5 in opening. The Court can take me at my word, yes. And
6 Mr. Sosland and I have known each other for many years, having
7 been partners for a long time. We both know how these cases
8 go, as does everyone else in this courtroom. And if there are
9 settlements to be had, we'll do them. Otherwise, we'll tee
10 them up for negotiation as appropriate, but the first, Your
11 Honor, is obviously settlement.

12 THE COURT: So to take you at your word, by the
13 people -- the people at the door, it will require some action.

14 MR. BIENENSTOCK: I understand, Your Honor.

15 Somehow Reorg Research has already informed I said I
16 would plan on filing a plan in three days. I want to clear
17 that up. I said 30 days.

18 THE COURT: Those digits can be a problem.

19 MR. BIENENSTOCK: And I will not take this point to
20 discuss Mr. Friedman's unfortunate remarks. We'll do that in
21 due course.

22 THE COURT: Thank you.

23 Yes, sir.

24 MR. RODRIGUEZ VIDAL: Good morning, Your Honor.

25 Carlos Rodriguez Vidal of Goldman Antonetti & Cordova on

1 behalf of Syncora Guaranty.

2 THE COURT: Good morning.

3 MR. RODRIGUEZ VIDAL: Thank you. As noted in the
4 Status Report filed on June 7, 2019, which is docket 1294, and
5 the Amended Joint Status Report that was filed on June 11,
6 which is docket 1334, Syncora and the government parties in
7 the Puerto Rico Electric Power Authority case have recently
8 made significant progress to enable Syncora to become a party
9 to the Restructuring Support Agreement.

10 Since the filing of the Joint Status Report, Syncora
11 has continued to negotiate with the parties and the other RSA
12 parties, and it is apparent Syncora has reached an agreement
13 in principle with all of the parties to the RSA. This
14 agreement, of course, is subject to some approvals and
15 documentation. And these are underway, and we expect to
16 complete those shortly. Thank you.

17 THE COURT: Thank you, Mr. Rodriguez Vidal.

18 Yes, sir.

19 MR. EMMANUELLI JIMENEZ: Good morning. Rolando
20 Emmanuel Jimenez on behalf of UTIER. I would like to
21 respond to Mr. Bienenstock's comments on the litigation.

22 And I would like to inform this Court on June 5th,
23 2019, UTIER filed a petition for a writ of certiorari, case
24 number 18-1521, requesting the invalidation of all the actions
25 and determinations of the Oversight Board based on solid

1 Supreme Court case law. This case could be considered in the
2 June 20th conference of the Supreme Court.

3 The Supreme Court's review is warranted since the
4 Court of Appeals misconstrued the de facto officer doctrine
5 and applied it to an Appointments Clause challenge. The
6 Supreme Court has expressly refused its application with
7 respect to Appointments Clause challenges in *Ryder versus U.S.*
8 --

9 THE COURT: I understand that that is the argument
10 that you are making to the Supreme Court.

11 MR. EMMANUELLI JIMENEZ: I understand, yes.

12 THE COURT: In the petition.

13 MR. EMMANUELLI JIMENEZ: But I would like to finish,
14 Your Honor, saying UTIER reiterates the seriousness of such
15 determinations on Puerto Rico, which may cause irreparable
16 damages and harmful consequences to the UTIER. Therefore,
17 UTIER believes that this contested matter regarding PREPA's
18 RSA is an unnecessary and burdensome waste of resources of the
19 people of Puerto Rico, since based on its unconstitutionality,
20 UTIER already reserved the right to challenge any and all
21 actions taken by the Oversight Board in the adversary
22 proceeding that's filed at 17-0228, docket 145.

23 Therefore, we believe that the Oversight Board
24 members hold their position without legal authority. Thus,
25 its previous and future actions are void. Thank you.

1 THE COURT: Thank you, Mr. Emmanuel Jimenez.

2 All right. Before we move on to the Fee Examiner's
3 report, I'd like to briefly touch on two additional topics not
4 listed on the Agenda. First, the Court has received and
5 reviewed the urgent motion of the Oversight Board and the UCC
6 for limited relief from the Supplemental Case Management Order
7 seeking to amend certain of the adversary complaints to add
8 additional defendants, adding up to a thousand defendants in
9 any given case.

10 I am currently working with the Clerk of Court to
11 establish appropriate procedures that would potentially allow
12 for necessary amendments. Nothing should be filed until the
13 Court enters an Order.

14 And you should understand that in order to ensure
15 reliability and close quality control of the ECF recordkeeping
16 system, the procedures that will be announced are likely to
17 cap the number of additions well below one thousand per case
18 and may utilize related-case designation methodologies for
19 achieving the additions and corrections. So stay tuned, and
20 sit tight until the procedural order is entered.

21 The Court has also received and reviewed the Joint
22 Status Report filed by Ambac and the Oversight Board in
23 connection with Ambac's motion concerning the application of
24 the automatic stay to the revenues securing PRIFA Rum Tax
25 Bonds, and the Court will be entering an appropriate order

1 soon. So again, sit tight on the discovery dispute. We
2 already have a briefing schedule and I will be entering an
3 order.

4 So with that, I would call upon the Fee Examiner's
5 counsel to present the fee-related matters.

6 Good morning, Ms. Stadler.

7 MS. STADLER: Good morning, Your Honor. Katherine
8 Stadler of Godfrey & Kahn appearing on behalf of the Fee
9 Examiner, Brady Williamson, who appears here today along with
10 our Puerto Rico counsel, Eyck Lugo.

11 We have two fee-related matters on the Agenda. The
12 first is the Fifth Interim Fee Period Applications Recommended
13 for Court Approval. We filed our report on June 5th, last
14 Wednesday. I am happy to report that since that filing, we
15 have resolved a group of additional fee applications that were
16 listed on Exhibit B as recommended for deferral but will be
17 moved to Exhibit A for purposes of the entered order -- or the
18 recommended order, I should say.

19 The listing of recommended applications in the Agenda
20 that the Oversight Board filed earlier this week is the
21 current listing of recommended fee applications. It includes
22 those that have been resolved since the filing of our report
23 last week, and I'm happy --

24 THE COURT: Ms. Stadler, apparently your voice is not
25 coming through clearly to New York, so if you'd speak more

1 directly into the microphone, I'd be grateful.

2 MS. STADLER: Okay. Thank you.

3 THE COURT: Thank you. That should be better.

4 MS. STADLER: Okay. As I was saying, the list of
5 the recommended applications on page two and three of the
6 Agenda that the Court has before it for today's Omnibus
7 listing is the recommendation for referral amount. It
8 includes several that have previously been listed on Exhibit B
9 as recommended for deferral, but happily I have resolved and
10 we'll now recommend for approval along with the others.

11 That application period, as you know, brings us up
12 through January of 2019, which means that some, not all, of
13 the applications that have been recommended for approval today
14 include the rate increase issue that we have discussed at
15 length, both in court and in our documents.

16 We have worked with all of the interested parties and
17 constituencies to reformulate the Presumption Standards Order,
18 as it relates to rate increases, to further clarify that the
19 purpose of the Order is a burden shifting goal. And that is
20 to put professionals on notice that rate increases above the
21 rate of inflation will be subject to additional scrutiny by
22 the Fee Examiner and will require additional showing by
23 professionals of a market-based reason for the increase.

24 The professionals understand that these are standards
25 that have to be applied in the context of applications. They

1 cannot be applied prospectively. And they need to take into
2 consideration the unique circumstances of every single
3 timekeeper for every single professional working on these
4 cases. And that number now, Mr. Williamson informed me
5 yesterday, is over 1,400 individual timekeepers.

6 So to create a rule that applies uniformly to 1,400
7 professionals of any category would be counterproductive in
8 our opinion. And so the reformulated Presumptive Standards
9 Motion -- Order seeks to clearly articulate the standards the
10 Fee Examiner will apply, create a threshold for which the
11 burden falls even more heavily on professionals to establish
12 the reasonableness of their fees, but allows flexibility in
13 the application, as is always necessary in any fee review
14 process.

15 We worked with other interested parties. We went
16 around many, many times with different formulations, and the
17 version that we filed last week with our informative motion
18 is, as I understand it, agreed by all of the interested
19 parties who've been in communication with us.

20 So I'm happy to answer questions either about fifth
21 interim applications or presumptive standards or anything else
22 on the Court's mind.

23 THE COURT: Thank you, Ms. Stadler, and thank you for
24 your written submissions. And I have reviewed the Fifth
25 Interim Report and the schedules thereto. I've considered

1 | them carefully, and the Fifth Interim Report, with its
2 | recommendations as brought up-to-date by your remarks here,
3 | and as reflected in the Agenda, is approved. And I will
4 | expect that you'll give me an updated order that will also
5 | terminate the resolved motions and bring up to speed the
6 | provisions for adjournment of the remaining applications that
7 | will be reflected on Exhibit B.

8 | MS. STADLER: Yes. We will submit a proposed order
9 | this afternoon. Thank you.

10 | THE COURT: Thank you.

11 | And I'm also grateful for the extensive work that has
12 | clearly gone into revisitation of the Presumptive Standards
13 | Motion, which is -- well, the informative motion is docket
14 | entry number 7214. And I am persuaded that the revised
15 | presumptive standards address appropriately the concerns that
16 | the Court has raised concerning rate increases, and,
17 | therefore, I will enter the Revised Proposed Presumptive
18 | Standards Order.

19 | MS. STADLER: Thank you, Your Honor.

20 | THE COURT: Thank you. And thank you for being here.

21 | Mr. Williamson, did you wish to make any remarks
22 | yourself?

23 | MR. WILLIAMSON: Your Honor, thank you. Brady
24 | Williamson, Fee Examiner. There's really no need to
25 | supplement Ms. Stadler's comments on either the fifth interim

1 recommendations or on the Presumptive Standards Motion.

2 With respect to the PREPA RSA, which is on the Agenda
3 for later in the day, we may have some comments on that as
4 well because of several specific provisions affecting
5 professional compensation, but I'll defer those to the
6 appropriate point.

7 THE COURT: Thank you, Mr. Williamson.

8 And so now we will turn to Agenda item III, which are
9 the uncontested claims objections.

10 Ms. Stafford. Good morning, Ms. Stafford.

11 MS. STAFFORD: Good morning, Your Honor.

12 THE COURT: And before you begin your remarks, I
13 would like to address some issues that arose in the context of
14 contested claim objections that appear to have implications
15 concerning the reliability and credibility of the claims
16 objection process. And I see that last night there was a
17 document filed withdrawing several claims, but I do want to
18 address directly the underlying issues.

19 MS. STAFFORD: Yes.

20 THE COURT: So specifically, several of the omnibus
21 claim objections asserted that they were objecting to proofs
22 of claim that were described as quote, exact duplicates. Each
23 of those objections included a declaration of Mr. Herriman of
24 the Alvarez and Marsal firm stating under penalty of perjury
25 that the claims had been reviewed and analyzed in good faith

1 by people under his supervision. And he concluded that the
2 claims assert the exact same liabilities. But then the
3 motions prompted over a dozen responses that asserted that the
4 claims were not, in fact, exact duplicates.

5 And my staff and I reviewed several of those proofs
6 of claim and others that were alleged to be duplicates and
7 found that many of them were asserted on behalf of children
8 whose parents or other guardians have asserted claims against
9 the Commonwealth for alleged violations of the Individuals
10 with Disabilities Act and other related issues.

11 Last night, the objections to many such claims were
12 withdrawn, but I am very troubled by these apparent errors in
13 the identification of objectionable claims. If these
14 claimants, their lawyers, or the Court had not noticed the
15 debtors' mistakes, properly filed claims might have been
16 disallowed, prejudicing the legal rights of allegedly disabled
17 children and their parents or guardians, who are among the
18 most vulnerable people.

19 That's simply inexcusable, given the responsibilities
20 and the resources of the Oversight Board, and also raises
21 serious issues about the underlying process and whether due
22 care is being taken in the first instance in reviewing claims
23 and putting forward claims objections. And so I would ask you
24 now to give me an overview of the process and any changes in
25 the process that are intended to be made going forward.

1 And I'll tell you, frankly, that I, at this point,
2 would not be prepared to sign off on final orders without the
3 filing of a certificate as to duplicate or amended claim
4 objections, which certificate would declare that all of the
5 claims have been re-reviewed and they are, in fact, actually
6 duplicate or amended claims, whether or not there has been a
7 response filed to them.

8 MS. STAFFORD: I completely understand Your Honor's
9 concerns, and we were also concerned by the number of
10 responses filed that asserted that claims identified as exact
11 duplicates were not, in fact, exact duplicates. And after we
12 saw the volume of those responses, we undertook to re-review
13 all of the claims that had been identified as exact
14 duplicates. And in the amended schedules that were filed last
15 night, a number of claims were withdrawn from the objections
16 which were not specifically identified by claimants who
17 responded.

18 Mr. Herriman, who is here in the courtroom, I will
19 call upon him to give us a bit of information about the
20 process that we went through to re-review all of these claims.
21 And we will make sure that we are reviewing the claims with
22 greater care and certainty going forward.

23 THE COURT: I am glad to hear that, and I'd be
24 grateful to hear from Mr. Herriman about the process now.

25 MR. HERRIMAN: Good morning, Your Honor.

1 THE COURT: Good morning, Mr. Herriman.

2 MR. HERRIMAN: For the record, Jay Herriman from
3 Alvarez and Marsal.

4 As Ms. Stafford noted, after receiving those
5 objections, we went back through our processes and realized we
6 had one reviewer who was not following our own processes. And
7 the system typically looked at an exact duplicate claim,
8 meaning someone took it on -- a claim, put it on a copy
9 machine and copied it, and that would be our proof.

10 In this case, one reviewer, in looking at litigation
11 claims, specifically did not notice certain information had
12 been changed. Literally, some of the time it was the
13 children's initials that had changed, and in some cases we
14 noticed they didn't pick up a change in the case number as
15 well. So we're going back through that review for training,
16 and also reaffirming with all of our reviewers, it literally
17 needs to be a photocopy of the claim before we sign off an
18 exact duplicate.

19 Also, we're putting additional QC processes in claims
20 to make sure an additional reviewer's spot checking the
21 initial reviewer's work to make sure those things don't slip
22 through again, Your Honor.

23 THE COURT: Thank you.

24 So as I said, I will need a certificate with the
25 revised proposed order attesting to the accuracy of the claims

1 and the objections.

2 MR. HERRIMAN: Absolutely, Your Honor.

3 MS. STAFFORD: We'll be happy to provide those, Your
4 Honor.

5 And with that, would you like any further information
6 about the uncontested claim objections at this time?

7 THE COURT: I don't believe so. Let me just check.

8 No. I just -- I had that portfolio issue about the
9 objections, and so having had a response to that portfolio
10 issue, and subject to the filing of the certification, the
11 uncontested claims objections are sustained and the subject
12 claims will be disallowed. I'll enter the Order after the
13 filing of the certification.

14 MS. STAFFORD: Thank you very much, Your Honor.

15 THE COURT: Thank you.

16 Just one moment. All right. And so this brings us
17 now to the contested matters, which are at Agenda item IV, the
18 first of which is the Puerto Rico Funds Motion to Vacate the
19 Appointment of the Official Committee of Unsecured Creditors.
20 We've allowed 20 minutes for the argument on that motion.

21 Good morning.

22 MR. CUNNINGHAM: Good morning, Your Honor. John
23 Cunningham of White & Case on behalf of the Puerto Rico Funds.

24 Your Honor, in the ten minutes that I have, if I
25 could reserve two minutes for rebuttal?

1 THE COURT: Yes.

2 MR. CUNNINGHAM: Thank you.

3 Your Honor, the Puerto Rico Funds based here in San
4 Juan hold over three billion of the ERS bonds. And with
5 respect to our motion, Your Honor, let me make one thing clear
6 right off the bat. The sole relief my client seeks is an
7 order that the Commonwealth UCC cannot be the ERS UCC based on
8 the obvious irreconcilable conflict that such committee
9 members have as fiduciaries to creditors of both estates.

10 And what is the conflict? It is undisputed, Your
11 Honor, at the behest of the Oversight Board, Commonwealth
12 legislature adopted Joint Resolution 188 and enacted 106,
13 mandating, as of July 2017, the dismantling of ERS, the
14 stripping of its assets, including ERS' stream of employer
15 contributions, and the diversion and siphoning of such assets
16 away from ERS into the Commonwealth's general funds.

17 All of this unprecedented legislation and actions by
18 the Commonwealth against ERS occurred post petition in total
19 disregard of ERS' automatic stay and without any approval by
20 this Court. Your Honor, this utter destruction and plundering
21 of ERS and its assets by the Commonwealth of course has led to
22 a fight to the death by ERS creditors to recover ERS assets
23 for distribution to ERS creditors in this Title III case.
24 Predictably, the only ERS creditors to wage this fight have
25 been the ERS bondholders.

1 In the 22 months since the ERS UCC has formed, what
2 has it done? What positions or actions has it taken to fight
3 the Commonwealth to recover ERS assets for the benefit of ERS
4 creditors?

5 The answer, absolutely nothing. It has sat idly by
6 for almost two years and has not lifted a finger to engage in
7 this fight. And there lies the conflict. The current members
8 of the ERS UCC, being current members of the Commonwealth UCC,
9 are completely incapable of taking an adverse position against
10 the Commonwealth that could lead to assets coming out of the
11 Commonwealth and back into ERS.

12 So how did we get this committee in the first place,
13 which is comprised, again, solely of the Commonwealth UCC
14 members? Well, the United States Trustee finally answered
15 this question in its objection to our motion. It states that
16 it solicited creditors of ERS for interest in serving on a
17 committee.

18 And then on page ten, the United States Trustee
19 admits, quote, No ERS unsecured creditors had been willing to
20 serve on a committee. So rather than have no ERS UCC, the
21 United States Trustee decided to appoint the Commonwealth UCC
22 as the ERS UCC, irrespective of the conflict.

23 The United States Trustee, in the objection, says
24 it's not clear that the ERS unsecured creditors would be
25 better off with no representation by the committee. Your

1 Honor, that's wrong. We would rather have, and this estate, I
2 would think, would rather have no UCC than a hopelessly
3 conflicted UCC.

4 THE COURT: I'd like to go back to that "we would
5 rather have" for a minute.

6 MR. CUNNINGHAM: Certainly.

7 THE COURT: You represent a constituency that claims
8 secured creditors status. What gives you standing to complain
9 about who, if anybody, represents unsecured creditors'
10 interests?

11 And if your concerns regarding the motivations of the
12 UCC are meritorious, why isn't it sufficient for you to offer
13 them for consideration as to the validity and weight of
14 positions actually advanced by the UCC?

15 MR. CUNNINGHAM: Your Honor, as a creditor, even as a
16 secured creditor, we have standing to seek the relief that
17 we're asking. And you'll hear I've narrowed the relief.
18 We're asking for one specific section, 1102. And that's
19 1102(a)(4).

20 And if I can get there, I'll explain that. But we do
21 have standing, because that section says a party in interest
22 can file the motion and relief that we're seeking.

23 So back to the motion, there has been much briefing
24 back and forth on the powers of this Court to vacate a
25 committee. We cited *Detroit*, similar cases saying you can.

1 They cited *Caesars*, similar cases saying you can't, but none
2 of those cases are in the First Circuit.

3 And we would say, Your Honor, we can resolve this
4 debate right now. Congress handed Your Honor the power to fix
5 the ERS UCC members' irreconcilable conflict in section
6 1102(a)(4) cited at page nine of our motion, and not cited at
7 all by UCC, nor cited, though, the powers referenced by the
8 United States Trustee. 1102(a)(4) was -- what I was just
9 talking about, says, on request of party in interest and as a
10 creditor of ERS, we are a party in interest, and after
11 noticing a hearing, the Court may order the United States
12 Trustee to change the membership of the committee appointed
13 under the subsection if the Court determines the change is
14 necessary to ensure adequate representation of creditors.

15 Your Honor, both the UCC and the United States
16 Trustee cite the case of *ShoreBank* at 467 B.R. 156, and it
17 provides a very good overview of the history of 1102(a)(4) and
18 how it was added to the Bankruptcy Code in 2005, to make clear
19 this Court has the power to order a change to committee
20 composition to assure adequate representation.

21 THE COURT: I understand that the Court has the
22 power, and that the power is directed to be used under
23 circumstances where it's necessary to assure adequate
24 representation, which is quite a high standard.

25 And so I would be grateful if you would, in some of

1 your remaining time, identify any actions that have been taken
2 by the UCC that you contend are breaches of fiduciary duty to
3 the unsecured creditors of ERS.

4 MR. CUNNINGHAM: I think it's the inactions that have
5 been taken by this committee, Your Honor. In the two years in
6 place, they have filed four pleadings in this case, all of
7 which address preservation of rights. Joinder of opposing ERS
8 bondholders' adequate protection, and we in response to
9 everything located -- 179, 231, 280 and 296, all before they
10 started to get active in March of this year.

11 Why did they start to get active? Why did they wake
12 up from their slumber? The answer I submit is simple.
13 Because at the end of January, the First Circuit found ERS
14 bondholders have perfected security interest in this case.
15 And in the beginning of February, we filed a motion to seek
16 the appointment of a trustee under Section 926 to recover the
17 assets that I just described have been sent to the
18 Commonwealth, which occurred post petition, which we believe
19 that the estate of ERS should seek to recover.

20 We ultimately settled with the Oversight Board and
21 the Commonwealth to have a tolling agreement in place, which
22 Your Honor approved. But none of that was done by this
23 committee. But once they saw that we are back to active, and
24 most importantly that we have filed our claims, you know,
25 again, a total of three billion -- I think between our group

1 and the Jones Day group, we have close to two-thirds of that.
2 We have filed taking claims in the Commonwealth case, an
3 administrative claim we submit because it all took place post
4 petition. But that's a very real threat to the unsecured
5 creditors of the Commonwealth, and for this committee to act.

6 So they've now awoken from their slumber and have
7 started taking action against our claims, which is fine
8 because, at the end of the day, the claim that they are
9 asserting has already been asserted by the Commonwealth. It's
10 an alleged claim that our bonds are *ultra vires*.

11 This was asserted by the Commonwealth in the Motion
12 to Dismiss before Your Honor on the taking claim. The UCC for
13 the Commonwealth never intervened in that action, took those
14 claims, repackaged it and filed the objection here in this
15 case. This isn't about -- to avoid that objection.

16 The Retiree Committee has also done a copycat
17 objection, so Your Honor's going to deal with that objection.
18 We're going to deal with it --

19 THE COURT: I need you to wrap up.

20 MR. CUNNINGHAM: So in our view, again, the emperor
21 has no clothes here in that this is a very real conflict, and
22 both the *ShoreBank* case, which did say that lack of adequate
23 representation would include conflicts which show a breach of
24 fiduciary duties or likely breach -- we think any action by
25 this committee to fulfill fiduciary duties to recover assets

1 to -- for ERS to pay ERS creditors is going to violate its
2 fiduciary duties to the Commonwealth, to the extent the
3 Commonwealth is in the cross hairs, which it clearly is, Your
4 Honor.

5 THE COURT: Thank you.

6 MR. CUNNINGHAM: Thank you.

7 THE COURT: Good morning.

8 U.S. TRUSTEE LECAROS ARRIBAS: Good morning, Your
9 Honor. Monsita Lecaros on behalf of the U.S. Trustee and
10 Department of Justice.

11 Good morning, everyone.

12 THE COURT: Good morning, Ms. Lecaros.

13 U.S. TRUSTEE LECAROS ARRIBAS: Your Honor, I wanted
14 to reiterate our objection to the Puerto Rico Funds request.
15 We understand our objection stands on its own. However, given
16 the Puerto Rico Funds Reply, I wanted to clarify that at no
17 time did the U.S. Trustee imply that there was no ERS creditor
18 in the committee. We did not affirmatively include it as an
19 argument because we understand that our other arguments under
20 1102, on their own warrant that the Puerto Rico Funds request
21 be denied.

22 We also wanted to assert the U.S. Trustee's interest
23 in and monitoring of the Official Committee's performance and
24 composition, which could undergo changes if we deemed it
25 necessary. And we would have done so, so far, if it had been

1 deemed necessary.

2 Your Honor, we take our statutory duty very
3 seriously, and we believe it should not be entrenched upon.

4 Thank you.

5 THE COURT: Thank you.

6 Mr. Despins.

7 MR. DESPINS: Good morning, Your Honor. Luc Despins
8 with Paul Hastings on behalf of the Official Committee.

9 Briefly, I will address some of the points that were
10 just made. The first thing is that it seemed to be a switch
11 in the relief that was sought. The motion clearly said it's a
12 motion to vacate the appointment of the committee as ERS'
13 committee. Changing those words doesn't make the relief
14 different.

15 Again, I think you focused on it, and that's the
16 right analysis, which is I've never seen a case where a
17 secured creditor is heard to get a committee to be disbanded
18 for the simple reason that, we're natural enemies. That's the
19 nature of the beast. And of course, every secured creditor by
20 definition wants a committee to be eliminated.

21 What I would address very briefly, because in the
22 Reply they raise an issue, which is there is no evidence that
23 SEIU has the mantle, if you will, to represent these employees
24 that are members of SEIU.

25 And I want to cite very briefly to Puerto Rico Law,

1 Chapter 51(a), Labor Relations, Public Service Section
2 1453(g), that says that every duly certified exclusive
3 representative, which SEIU is pursuant to a collective
4 bargaining agreement, may sue or be sued and appear as
5 plaintiff or defendant before the commission, the courts of
6 justice, et cetera, as an entity or as the representative of
7 its members.

8 And if you look at the list of creditors that the
9 Commonwealth -- or that the Oversight Board filed for ERS,
10 there are thousands and thousands of SEIU members that are
11 listed as ERS creditors. So I think that resolves the issue.

12 We don't think there's a need to have a member of the
13 committee be an ERS creditor, but in the event we have one
14 and, you know, we -- other than this alleged inaction, which
15 frankly, we don't follow, everything the Committee has done
16 has been to protect the interests of unsecured creditors of
17 ERS and to address the issue of how do we awaken from her
18 slumber.

19 The point is these bonds are non-recourse, Your
20 Honor. If Your Honor ruled, and actually you did rule, that
21 effectually their collateral was nil or close to nil, that was
22 game over. Unfortunately, from our point of view, the First
23 Circuit reversed, so there was no need to go after the
24 underlying bonds until the First Circuit reversed.

25 So yes, I would like to file these complaints all the

1 time. It's good money. But the point is why do that if
2 there's a ruling by the Court that the collateral -- there's
3 no collateral. At that point, there's no need to do that.

4 Yes, First Circuit reversed. At that point we needed
5 to go and assert those claims to avoid the bonds themselves --
6 it's why we took that time. It's not because we didn't think
7 about it before. It's because it didn't make sense to do that
8 before.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Cunningham.

12 MR. CUNNINGHAM: Your Honor, briefly, our motion to
13 vacate is as to this committee. And we would, as I said,
14 modify that because we cited 1102(a)(4) to have Your Honor
15 simply order the removal of the Committee members, and if the
16 United States Trustee -- because there's a top 20 list that I
17 assume they've looked at of other unsecured creditors.
18 There's other claims that have been filed. If they want to
19 appoint our committee members to this committee, we have no
20 problem with that. We are not trying to eliminate the UCC.

21 THE COURT: But given our current situation where the
22 UCC has been appointed for the Committee for ERS and your
23 request that I direct the U.S. Trustee to change the
24 composition of the Committee for ERS to include only ERS
25 creditors, you're either asking me effectively to direct the

1 U.S. Trustee to appoint a stacked committee for ERS, or you're
2 asking me to direct the U.S. Trustee to gut the current UCC,
3 load it with ERS people, whereupon the Commonwealth and HTA
4 unsecured creditors will complain that everything is stacked
5 against them.

6 So I don't really see a practical difference in your
7 request for relief. I think it always comes down, still, to
8 an attack on the appointment of the committee as it has been
9 done for ERS.

10 What am I missing?

11 MR. CUNNINGHAM: Your Honor, six of the members --
12 you just described -- six of the members of the UCC admittedly
13 have no claims against ERS. Why is that the case? I mean,
14 that you're having unsecured creditors or not even ERS
15 creditors -- and this is not a multi-debtor case with
16 affiliated entities that they try to cite.

17 ERS is a trust, and the only reason the
18 instrumentality is -- it was created by statute, but it
19 doesn't mean they get to import some other creditors'
20 committee. And some other creditors don't even have claims
21 against ERS. If you're going to do that, borrow the
22 creditors' committee -- at least there won't be any conflict,
23 the one creditors' committee counsel just mentioned, SEIU,
24 that, I understand, Your Honor, has held they are creditors of
25 ERS for purposes of filing under that 906. However, Your

1 Honor hasn't made a determination of whether they can
2 adequately represent the unsecured creditors in this case.
3 Given then again they labor under both concepts, they wear
4 both hats, but now, as we heard this morning, their mantle, as
5 he calls it, is to protect the retiree benefits.

6 Well, the retiree benefits here, which we just
7 described under this proposed deal, are going to have a range
8 of recoveries under those creditors between 91 percent and --
9 Your Honor, the maximum discount is eight and a half percent.
10 And ironically, you hear the government -- Governor and
11 Commonwealth say it's not enough.

12 In the meantime, all other ERS creditors, whether ERS
13 bondholders or other trade or other vendors that Mr. -- now,
14 in his pleading he says, we are left for road kill in terms of
15 this case --

16 THE COURT: Please wrap up.

17 MR. CUNNINGHAM: We think the focus has to be on the
18 issue of conflict. If I can add this one last point, Your
19 Honor.

20 THE COURT: Yes.

21 MR. CUNNINGHAM: We cited and made mention of the
22 *Venturelink* case, the case predated 1102(a)(4), by Judge
23 Felsenthal years ago, dealt with a committee counsel and
24 removal of the chairman of a committee based on a conflict.
25 And at that time, without 1102(a)(4), it looked at whether the

1 trustee actions were arbitrary and capricious because of
2 claims against that former board member, chairman of the
3 board, with respect to monies that had flowed just prior to
4 the case and its removal. And the judge thought that that was
5 the appearance of a conflict.

6 And the Court, in granting the -- in ordering the
7 removal, said -- this is 299 B.R. 420 at page 423. This Court
8 has held that a conflict of interest that amounts to a breach
9 of that fiduciary duty constitutes the type of conflict that
10 would mandate removal of the creditor from the committee. The
11 Court adds, the appearance of a breach of that fiduciary duty
12 should likewise mandate a removal. The bankruptcy process
13 must be fair and appear fair.

14 We don't believe having the aggressors, Unsecured
15 Creditors' Committee, Commonwealth Committee, be the
16 Creditors' Committee for ERS, sets up a process that is fair
17 and appears fair in the largest municipality bankruptcy case
18 here. We don't believe, analogous to HTA and PREPA, because
19 they have their Oversight Board, creditors, and they can raise
20 whatever claims they make -- they didn't have the
21 post-petition legislation we had, Your Honor.

22 THE COURT: Thank you.

23 MR. CUNNINGHAM: Thank you.

24 THE COURT: Before the Court is the Motion of the
25 Puerto Rico Funds to Vacate the Appointment of the Official

1 Committee of Unsecured Creditors in the ERS case. That motion
2 is docket entry number 6162 in the 17-3283 jointly
3 administered case; and docket entry 433 in the ERS case, which
4 is 17-3566. And I will refer to it as "the Motion."

5 In the Motion, the Puerto Rico Funds request entry of
6 an order vacating the appointment of the Official Committee of
7 Unsecured Creditors in ERS' Title III case. And I'll refer to
8 that committee as "the Committee."

9 Alternatively, the Puerto Rico Funds argue that the
10 Court should reconstitute the Committee's members in the ERS
11 case to be comprised solely of members holding unsecured
12 claims against ERS. And the Court has carefully considered
13 all of the written submissions and listened carefully to the
14 arguments made in court today.

15 At the outset, the Court notes that there is a
16 question as to whether, as putative secured creditors of ERS,
17 the Puerto Rico Funds are properly in a position to attack the
18 membership of an unsecured creditors' committee. And this is a
19 point to which the U.S. Trustee also alluded in her
20 submission, docket entry number 7129.

21 Putting that question aside, and for the following
22 reasons, the Court concludes that it does not possess the
23 authority to disband the Committee under Sections 1102 and 105
24 of the Bankruptcy Code. And as to the Movants' request that
25 the Court reconstitute the Committee, or direct the

1 reconstitution of the Committee, the Court finds that the
2 Puerto Rico Funds have failed to demonstrate that such a
3 change is necessary to ensure adequate representation of
4 creditors as required by Section 1102(a)(4) of the Bankruptcy
5 Code. The Motion is therefore denied.

6 Section 1102(a) of the Bankruptcy Code governs the
7 formation, appointment, and modification of official
8 committees. The powers set forth in that section are the only
9 powers over committees that the Code gives to the Court, and
10 nothing in Section 1102(a) confers on the Court the power to
11 disband a committee appointed by the United States Trustee
12 under Section 1102(a)(1).

13 Furthermore, Section 105 of the Code, 105(a), is
14 neither an independent source of rights, nor a source of
15 substantive authority. And the Court does not find in Section
16 105(a) a source of authority to grant the relief requested by
17 the Puerto Rico Funds.

18 *In Re: City of Detroit*, 519 B.R. 673, (Bankr. E.D.
19 Mich. 2014), which I'll refer to as *Detroit*; and *In Re:*
20 *Pacific Avenue, LLC*, 467 B.R. 868, (Bankr. W.D. N.C. 2012),
21 which I'll refer to as *Pacific Avenue*, are not persuasive as
22 to the existence of court authority to vacate the appointment
23 of an official committee.

24 The *Detroit* decision is based in part on the
25 applicability of Section 1102(a) to proceedings commenced

1 under Chapter Nine of the Bankruptcy Code. Here, Section
2 301(d) of PROMESA provides that a reference to this title,
3 this chapter, or words of similar import in a section of Title
4 11 of the United States Code, shall be deemed to be a
5 reference to Title III of PROMESA.

6 Thus, the reference in Section 1102(a) to an order of
7 relief under Chapter 11 of this Title is deemed to be a
8 reference to PROMESA Title III and requires the appointment of
9 a Committee of Official Unsecured Creditors after the Court
10 Order for Relief in the Title III case. Thus, the reasoning
11 in *Detroit* regarding the inapplicability of Section 1102(a) to
12 Chapter Nine proceedings is not instructive in these Title III
13 proceedings.

14 The Court further concludes that Section 105(a) of
15 the Bankruptcy Code does not empower the Court to disband an
16 official committee appointed by the United States Trustee
17 under Section 1102(a), and therefore, declines to adopt the
18 *Detroit* Court's Section 105(a) analysis.

19 The *Pacific Avenue* Court's reasoning regarding
20 Section 105(d) is similarly unpersuasive. Particularly since
21 the committee appointment in that case had been made by the
22 Court in the first instance in the absence of a U.S. Trustee
23 program. The motion is therefore denied insofar as the Puerto
24 Rico Funds' request that the Court disband the committee that
25 has been appointed in ERS' Title III case.

1 As to the alternative request, the movant's request
2 that the committee's membership be reconstituted to be
3 comprised solely of members holding unsecured claims against
4 ERS, Section 1102(a)(4) of the Bankruptcy Code, incorporated
5 into PROMESA, permits the Court to order the United States
6 Trustee to change the membership of a committee appointed
7 under this subsection if the Court determines that the change
8 is necessary to ensure adequate representation of creditors.

9 The Puerto Rico Funds have not demonstrated that a
10 change in the membership of the committee is necessary to
11 ensure adequate representation of unsecured creditors in the
12 ERS case. The alternative relief sought by the Puerto Rico
13 Funds would effectively result in a direction from the Court
14 to the U.S. Trustee to create a separate unsecured creditors
15 committee for ERS. That is an extreme remedy that could
16 generate significant transaction costs for all creditors
17 involved in the ERS case.

18 As the U.S. Trustee and the Committee have noted in
19 their submissions, a single committee is frequently appointed
20 in large multi-debtor cases to represent the unsecured
21 creditors of related debtors whose cases are being jointly
22 administered. These committees often consist of creditors
23 with a variety of viewpoints, and mere conflict of members of
24 an official committee is not a basis for modification of
25 committee membership in the absence of specific evidence that

1 committee members have breached fiduciary duties.

2 Movants have not persuaded the Court of any actual
3 breach of fiduciary duty on the part of the Committee, nor
4 have Movants demonstrated that an insurmountable conflict
5 exists among Committee members. For this reason, the Motion
6 is denied.

7 Arguments regarding the potential conflicts on the
8 part of the Committee or individual members, where relevant,
9 can be raised and considered in context as the Committee takes
10 positions in these Title III proceedings. And the Court will
11 enter an order reflecting this decision.

12 Thank you, Counsel.

13 The next contested item is the Committee's Motion to
14 Establish Procedures Regarding the Omnibus Objection to the
15 Claims of the ERS Bondholders, and before I hear from counsel,
16 I have some remarks.

17 So I observed on Monday night that Mr. Despins filed
18 an informative motion addressing a request from the Retiree
19 Committee that its claim objection from April 23rd should be
20 consolidated procedurally with the claim objection procedures
21 that are before the Court today. And last night the ERS
22 Bondholder Group, represented by Jones Day, filed a response
23 to that informative motion.

24 Given that the Retiree Committee's Omnibus Objection
25 was filed nearly two months ago, it should be no surprise that

1 I was not expecting a new filing and a description of a
2 dispute in an informative motion at the 11th hour before this
3 hearing. In the future, when such issues arise, I anticipate
4 that you will coordinate among the interested parties in a
5 timely fashion and submit a proposal to the Court for the
6 orderly presentation of the application, including briefing of
7 any disputes that cannot be resolved consensually. And that
8 will allow disputes, like the one that appears to continue
9 here, to be considered and resolved in an orderly and
10 efficient manner.

11 There's no good reason to have to deal with
12 procedural issues like this on the fly. And I don't believe,
13 given the objections that the ERS Bondholder Group has
14 previewed in the Response filed last night, that it would be
15 an efficient use of resources to address these issues today.
16 And I suggest that the parties meet and confer to try to work
17 out the issues, and if disputes remain, the parties should
18 work out a joint proposal for orderly briefing of the issues
19 regarding coordination with the Retiree Committee's
20 objections.

21 I have to point something out about the proposal that
22 does exist, however broad or narrow it ends up being. I will
23 require one change. The Revised Proposed Order that is on the
24 books now includes two provisions under which certain filings
25 in any given matter will be deemed filed in other contested

1 matters and/or adversary proceedings. It sounds like
2 something that will be easy for counsel and work really well
3 for counsel, but it's entirely unworkable for the Court. So
4 any filing that is expected to be considered in multiple
5 matters must reflect all the relevant captions and be filed in
6 each relevant matter.

7 So my proposal is that we adjourn this matter so that
8 you can work out an agreement and/or an orderly briefing of
9 the issues regarding coordination, so I can resolve it on
10 submission. Does anyone want to be heard on this?

11 MR. DESPINS: No, Your Honor.

12 THE COURT: All right. So we will mark this as
13 adjourned to the July Omni, but I will expect that I'll have
14 either an agreement or briefing substantially in advance of
15 the July Omni. Thank you.

16 Just one moment. Yes. So now Agenda Item IV.3 is
17 the Debtors' Motion to Amend the Omnibus Objection Procedures.

18 MS. STAFFORD: Good morning again, Your Honor.

19 THE COURT: Good morning.

20 MS. STAFFORD: Laura Stafford from Proskauer Rose on
21 behalf of the Financial Oversight and Management Board.

22 As Your Honor knows, there are well over 300 thousand
23 claims pending on this basis, and it isn't individual claims.
24 It would be overburdensome to the Court and, frankly, the
25 debtors themselves, to file objections to the docket on that

1 number of claims. That's why we sought the modification of
2 procedures last fall, and now that we've identified issues
3 with many of the claims, we're here to file substantive
4 procedure objections as well.

5 These procedures were developed in confirmation and
6 coordination with the Court's office staff and we believe
7 represent an efficient means of handling the large number of
8 claims pending in this case, while preserving claimants' due
9 process rights.

10 THE COURT: May I ask you to speak just a little
11 slower?

12 MS. STAFFORD: I'm sorry.

13 THE COURT: Thank you.

14 MS. STAFFORD: The claimants receive information via
15 the Omnibus objections sufficient for them to understand
16 factual and legal bases on which there's objecting to their
17 claims. The primary objection raised by the Committee to the
18 motion is the motion should be adjourned until an ADR motion
19 has been filed.

20 We filed an ADR motion last Wednesday. It is
21 currently set for hearing at the July 24 Omnibus. There is no
22 reason, in our view, to delay this motion and further delay
23 the ability to reconcile claims against them during the six
24 weeks while that other motion will be pending.

25 The Committee's other objections highlight concerns

1 about evidentiary issues, all of which we believe are better
2 suited to be considered by the Court in the context of
3 individual objections to individual claims. To begin, the
4 Committee objects that the procedures purportedly put the
5 evidentiary burden on the creditor instead of debtors. The
6 procedures don't purport to do anything of the sort.

7 And it appears the Committee is concerned they will
8 be boilerplate, that statements will parrot on which we seek
9 objections, but that is not the case. The debtors will
10 provide enough information to understand what the bases for
11 their objections may be.

12 For example, for a books and records objection, we
13 would indicate that the debtors' books and records suggest
14 that an invoice of a certain amount was provided and a payment
15 was made on a certain date by a certain check. That
16 information we believe is sufficient to provide the claimants
17 with enough notice of the evidence being presented against
18 them.

19 To the extent Your Honor has concerns about the
20 sufficiency of any of those bases for an objection, that we
21 believe is a question for the Court to consider at a hearing
22 on the objection and not a basis to deny our ability to
23 proceed with an Omnibus objection at all.

24 With respect to the specific additional substantive
25 grounds to which the Committee objects, we'd submit all three

1 of these grounds are very common grounds on which to object to
2 claims in bankruptcy cases, especially in large, complex cases
3 such as this one. As we noted in our papers, certain
4 districts even permit these types of grounds for substantive
5 Omnibus objections in their rules.

6 With respect to the -- I'll just briefly note the
7 three substantive grounds that the Creditors' Committee has
8 objected to. With respect to the books and records objection,
9 as I noted before, we intend to include pertinent information
10 from the debtors' books and records, and creditors of course
11 will retain the right to object and present their own evidence
12 in response.

13 With respect to the unliquidated claim basis, the
14 Creditors' Committee appears to be objecting on the basis that
15 a claim cannot be disallowed solely on the basis it is
16 unliquidated. But as we noted in our papers, that's not what
17 we're seeking to file, an objection, on an Omnibus basis, such
18 that those claims can be limited in order to determine whether
19 and to what extent allowed.

20 And with respect to the final substantive basis that
21 the Creditors' Committee has challenged, which is the no
22 liability basis, I would submit that is a very common basis on
23 which to make Omnibus objections in large bankruptcy
24 proceedings. And it's particularly necessary here where
25 thousands of claims have been filed that assert liabilities

1 that certainly are not properly asserted against the debtors,
2 or estate, because bonds arise out of other entities unrelated
3 to Title III debtors --

4 THE COURT: And again, would you expect to lay that
5 out clearly in the objection to claim?

6 MS. STAFFORD: We certainly would, Your Honor.

7 THE COURT: Now, the proposed procedures include a
8 per motion cap that's substantially higher than a cap that I
9 understand was discussed with the Administrative Office, and
10 it raises logistical concerns both at the Clerk's Office level
11 and, frankly, at the level of my very limited staff in terms
12 of preparing for Omnibus Hearings. And so with a cap of 30
13 omnibus objections for any single omni and the cap of 1,000
14 claims per motion, we could see up to 30,000 claims that are
15 the subject of substantive objections being cued up for a
16 single omnibus hearing. And that -- and it makes me shudder.

17 So at what rate, as a practical matter, do you
18 contemplate you would be filing objections under these
19 procedures? And I'd like your thoughts on how you would
20 intend to manage the process to avoid overburdening a single
21 hearing, such as by seeking to adjourn hearings on objections
22 that receive substantial responses, or some other techniques
23 to help me out here.

24 MS. STAFFORD: Completely understood, Your Honor.

25 And I think one of the challenges that we face is that our

1 ability to put single Omnibus objections together that cover
2 500 or even a thousand claims at a time is somewhat difficult.
3 And as you'll notice, a number of the Omnibus objections that
4 are scheduled for hearing today, some of them meet the cap of
5 500, but many are well below and have more along the lines of
6 23, or seven, or -- at a low, seven claims per objection.

7 So even though we are hoping to set up to 30
8 objections per hearing, we understand that it's unlikely that
9 there will be up to 30,000 claims that will actually be heard
10 in any given hearing because of the way we need to bring
11 claims across Omnibus objections. So we're hopeful we never
12 are in a position where 30,000 claims are heard at a single
13 hearing.

14 We're happy to consider, when appropriate, to adjourn
15 hearings if we receive a large number of responses, especially
16 that some of these are substantive responses, bases that need
17 to be dealt with over a longer period of time. So we're happy
18 to work with the Court when it comes to finding a way to make
19 it as manageable as it can be.

20 THE COURT: I appreciate that.

21 MS. STAFFORD: Yes.

22 THE COURT: And I have one other question for you.
23 You indicated in your papers that there are certain types of
24 claims or issues that you think would not be amenable to the
25 ADR process that you've proposed in connection with the July

1 Omni. Can you elaborate on such categories of claims?

2 MS. STAFFORD: Those would include bond claims,
3 principally claims arising out of funded indebtedness. Those
4 are the types of claims we don't necessarily deem appropriate
5 for ADR procedure, which we are hoping to work with and deal
6 with vendor claims and accounts payable type claims.

7 THE COURT: Thank you.

8 MS. STAFFORD: Thank you.

9 THE COURT: Mr. Despins.

10 MR. DESPINS: Your Honor, we filed a limited
11 objection and it's based on two issues really. One, there was
12 no AD -- before this draft motion was combined with an ADR
13 procedure, these two were separated. Now we see the ADR
14 motion, and we say in our objection, paragraph one, that we
15 don't agree with that structure.

16 And you might say, well, that's not before me; we'll
17 deal with that later. That's fine. We just wanted you to
18 know that something along the lines of something like the
19 Detroit bankruptcy, with mediation and arbitration -- and to
20 put a fine point on this, arbitration with people based in
21 Puerto Rico that have legal training in Puerto Rico and that
22 speak Spanish. The reason for that, Your Honor, is simple. I
23 don't know if you remember this. You probably remember this.
24 I remember in New York there was a COFINA claims objection.
25 The claimant was here in Puerto Rico. And you were very

1 patient, and this is a claimant that said they owned land
2 around COFINA --

3 THE COURT: Yes.

4 MR. DESPINS: -- but there was no land. But anyway,
5 the point is that was just a vignette or a little example of
6 that multiplied by hundreds of thousands of what's going to
7 happen. And in that context, not having at first local
8 arbitrators I think will be a real impediment, but at the end
9 of the day, that's your call. Meaning I have no legal tools
10 to make that happen over my -- we have no -- we raised that
11 with the Board. They rejected it. So I'll move on, but I
12 think it would help address a lot of the issues I am about to
13 address in a second.

14 THE COURT: Well, in connection with the continuation
15 of the procedures in July, I'll invite you to, if you wish,
16 use your briefing argument space to explain how you would
17 anticipate coordinating the logistics of soliciting informed
18 consents and waiver of judicial processes by people to go into
19 a binding arbitration proceeding in the first instance, and,
20 you know, the transaction costs of that sort of approach in
21 addition to recruiting and managing arbitrators and how that
22 could happen. I'd be happy to hear that, but not --

23 MR. DESPINS: No. No. We can do that, and it's been
24 done in other cases before.

25 So now let me turn to the motion itself, and I would

1 say that generally this is -- I will stipulate this is a
2 standard motion, but the problem is this is not a standard
3 case. And we heard this morning from Your Honor about just an
4 issue, very simple, what is a duplicative claim; what is not a
5 duplicative claim; and whether, when we're dealing with a
6 books and records objection -- and let's be clear about that.
7 A books and records objection is something that lawyers like
8 me created. There's nothing like that under the Rules. It is
9 necessary to deal with the claims, and practically, it's a
10 burden shifting device.

11 And the first question with books and records
12 objections -- Alvarez & Marsal is a good firm, but I guarantee
13 you they don't have all the books and records of the
14 Commonwealth. In fact, the Oversight Board spent millions of
15 dollars for an investigation to investigate where is the cash.

16 If it takes you millions of dollars to investigate
17 where is the cash in the Commonwealth, and we know that the
18 Commonwealth's books and records for 2017 have not been
19 finished yet, they haven't been audited -- so the point we're
20 making, Your Honor, is that -- I know you said, will you put
21 more than books and records, and I said yes, of course we
22 will. We have severe doubts that that can be accomplished,
23 and that's why a more informal arbitration process -- that's
24 why I'm not combining the two.

25 I know it's not before Your Honor, but with respect

1 to people who understand how the government works and local
2 laws and all that, it would be much more beneficial. But
3 again, I can tell you in other cases, books and records
4 objections have been approved. I filed them when I
5 represented debtors. So I can't tell you it's not been done,
6 but on the record here, where there's been no auditing of
7 books and records we're talking about, and the fact that we
8 know that one of the -- in PROMESA, it talks about lack of
9 transparency. I'm not making that up. It's in the statute.
10 It's because of these issues.

11 And you might say, well, we can deal with that when
12 the objection process actually unfolds, but the reasons are --
13 I'm concerned we won't be there at that point. Why? Because
14 we can't represent individual claimants. That's not our job.
15 We represent claimants as a whole.

16 So who is going to watch out for these people, the
17 pro se people? That's why I'm raising now --

18 THE COURT: So who would be watching out for them in
19 individual arbitrations?

20 MR. DESPINS: Neither, but I think there a level
21 of -- or the Committee believes there will be a greater level
22 of comfort because, one, it's going to be done with people
23 that have a legal background in Puerto Rico law and that have
24 the experience of dealing with Puerto Rico claims involving
25 the government. That is the goal or the -- that's the belief

1 at least, that it would be more beneficial to those claimants.
2 At least they will perceive it to be more beneficial to them.

3 Whether at the end of the day it accomplishes a
4 result, I don't know, Your Honor. But it's true we're not
5 going to represent them in arbitration either. But we do have
6 concerns to applying the typical big Chapter 11 rules to this
7 process, and that's what we are communicating to the Court,
8 Your Honor.

9 THE COURT: And of course the Court is also sensitive
10 to not only the volume of claims but the nature of objections
11 and nature of claims; and at the end of the day, the Court
12 will have to determine whether whatever the Oversight Board
13 has offered up in the claims objection is sufficient to rebut
14 prima facie validity of the case. This is not -- of the
15 claim. You know, it will be me. It's not a machine.

16 So, these things have to be taken into account and
17 considered at all levels, and no matter of mechanism -- the
18 boards aren't shifting. There may be reasons for me to
19 scrutinize more carefully or be more concerned on the front
20 end of what's being offered up in the way of context in the
21 way of claims objections, but I want to assure you and
22 everyone listening that this -- the Court is not considering
23 any of these claims objections procedures rubberstamp
24 procedures. And as you heard this morning, the Court
25 specifically raised the concern and had in mind the concern

1 before the withdrawal of the duplicate problem claims, you
2 know, the fact that it didn't seem to be working. And so the
3 Court is putting that to the test.

4 MR. DESPINS: It puts a huge burden on the Court, but
5 I was very pleased to hear what you said. There is no doubt
6 about that. It puts a huge burden on the Court.

7 THE COURT: Don't I know it.

8 MR. DESPINS: But again, this was on cookie cutter
9 stuff. Now, going to the next level, pro se claimants, we're
10 just concerned about that.

11 THE COURT: Thank you. I hear you.

12 Anything further, Ms. Stafford?

13 MS. STAFFORD: Just briefly, Your Honor. We
14 appreciate that it does put some burden on the Court, and we
15 also appreciate the concerns that the Court had with the
16 previous claims. Okay. And I think our willingness to go
17 back and re-review the claims and confirm that the claims that
18 we've put on our objections are in fact exact duplicates,
19 that's exactly the same level of concern and care that we plan
20 to take as we move through these substantive objections as
21 well.

22 THE COURT: Thank you.

23 MS. STAFFORD: And would you like to proceed on to
24 the remaining contested motions as well?

25 THE COURT: Well, I should rule on this I suppose.

1 MS. STAFFORD: Yes.

2 THE COURT: So this Motion for Entry of an Order
3 Approving the Amended Omnibus Objection Procedures and for the
4 relief, which is docket entry number 7051 in the 3283 case,
5 referred to as the motion, is before the Court. And the Court
6 has considered carefully the requested relief and the parties'
7 written and oral argument and finds that the proposed relief
8 is appropriate under the circumstances.

9 The procedure will enable the debtors to resolve
10 efficiently tens of thousands of claims, and will thereby
11 reduce the transaction costs of the claims resolution process
12 significantly. The Court acknowledges the concerns expressed
13 by the UCC concerning the need for fair and efficient
14 alternative dispute resolution procedures, and as we have all
15 noted, there are proposed ADR procedures scheduled to be
16 addressed at the July 24, 2019, Omnibus hearing. And the
17 Committee has also raised legitimate concerns regarding the
18 need for debtors to meet their burden of overcoming the prima
19 facie validity of properly filed proofs of claim and the need
20 to protect the legitimate rights of every claimant.

21 The Court has reviewed the procedures carefully,
22 those being the amended Omnibus objection procedures, and
23 finds that the proposed procedures do not change the
24 allocation of the burden of proof. Each properly filed proof
25 of claim will retain its prima facie validity pursuant to

1 bankruptcy three -- 3000(f), and the Oversight Board will have
2 the burden of coming forward with evidence or legal argument
3 sufficient to overcome the presumption of prima facie
4 validity.

5 The claimants will have the same right to the Omnibus
6 claims related to this Order as they would have with respect
7 to an ordinary individual claim objection. And individuals
8 with claims in these Title III cases will have the ability to
9 submit supporting evidence and legal arguments in defense of
10 their claims.

11 The Committee has suggested the procedure should
12 advise claimants of their right to seek discovery concerning
13 the objection to their claims. The Court declines to single
14 out that aspect of bankruptcy procedure for inclusion in
15 notices to claimants. Claimants represented by counsel should
16 not need that reminder, and capturing the conceptual and
17 operational aspects of discovery and notice materials would
18 unduly lengthen those documents.

19 The process will be subject to supervision and
20 oversight by the Court, which will ensure that the process is
21 fair, transparent and efficient. The procedures streamline
22 the claims resolution process in a manner that is common in
23 complex bankruptcy cases, and such procedures are necessary in
24 light of the large number of proofs of claim filed in these
25 Title III cases.

1 Accordingly, the motion is granted and the
2 Committee's objection is overruled. The Court will enter the
3 debtors' Proposed Form of Order.

4 MS. STAFFORD: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Now we can go on to the matters queued up as
7 contested objections to claims. I think -- did we lose
8 somebody? So have we lost Court Solutions?

9 All right. We'll have to take a minute because we've
10 lost Court Solutions.

11 All right. I understand that we are reconnected with
12 Court Solutions now and we can proceed. Would everyone be
13 seated, except for Ms. Stafford? Thank you.

14 MS. STAFFORD: So we'll begin with the 20th Omnibus
15 Objection of Claims of the Commonwealth of Puerto Rico, which
16 is an objection to a number of claims that were amended and
17 subsequently superseded. Only two responses were filed with
18 respect to this objection.

19 The first of these asserts that the -- acknowledges
20 that its original claim was amended and superseded and asserts
21 that the original claim would have been automatically deleted
22 as a result of the amendment, which unfortunately is not the
23 case and the original claim does remain on the register.
24 Because the claimant does not disagree that the original claim
25 has been amended and superseded, we request the objection be

1 granted as to this claim.

2 THE COURT: So this is the Nestor Rodriguez Marty
3 claim?

4 MS. STAFFORD: That is correct.

5 THE COURT: The objection is sustained and the claim
6 will be disallowed. And so that is the objection that was the
7 response filed at 7234.

8 MS. STAFFORD: With respect to the next response
9 filed by the United States of America on behalf of Customs and
10 Border Protection, this response asks for an order preventing
11 the Commonwealth from later arguing that the amended claim
12 does not properly relate back to the original claim.

13 We spoke with the United States and reviewed their
14 response, and we understand that their concern is that if the
15 Court were to find that the amended claim is an improper
16 amendment, that the disallowance of the original claim would
17 prejudice it because it would be left without any claim
18 properly asserted against the Commonwealth. We understand the
19 concerns, but we think that the proposed order the United
20 States is seeking is simply too broad.

21 We've agreed that we will not contest whether the
22 liabilities, as asserted in the original claim, were properly
23 asserted against the Commonwealth, and we think that
24 representation should resolve the United States' concerns. To
25 the extent the amended claim does seek to assert liabilities

1 beyond those asserted in the original claim, we think it's
2 proper to preserve our right to object to those at a later
3 time.

4 THE COURT: Would you be willing to amend the Order
5 to reflect that the objection is sustained without prejudice
6 to the parties' positions as to the timeliness aspects of the
7 amended claim that were not asserted in the original claim?

8 MS. STAFFORD: That would be great, Your Honor.

9 THE COURT: So if you will give me a revised proposed
10 order that includes that language as to this claim, I will
11 sign that order.

12 MS. STAFFORD: We will be glad to do so.

13 No further responses were filed as to the 20th
14 Omnibus Objection, but I understand from Your Honor's comments
15 earlier that we would submit a certification with respect to
16 these subsequently amended claims that were not responded to,
17 correct?

18 THE COURT: Yes.

19 MS. STAFFORD: Very well.

20 THE COURT: And so I will look forward to the revised
21 proposed order with the certification, and subject to those
22 submissions, the objections will be sustained.

23 MS. STAFFORD: Thank you very much, Your Honor.

24 THE COURT: Thank you.

25 MS. STAFFORD: The next objection is the 21st

1 | Objection of the Commonwealth of Puerto Rico to deficient
2 | claims. Only one response was filed as to this objection. We
3 | reached out to and spoke with that respondent, and we are
4 | happy to report that she has withdrawn her claim and will be
5 | filing an amended claim asserting an appropriate amount of
6 | liability, which we reserve our right to object to at a later
7 | time. But it's been withdrawn for purposes of this objection
8 | at this time.

9 | THE COURT: Very good. So you will be making a
10 | submission reflecting that withdrawal and truing up the
11 | paperwork?

12 | MS. STAFFORD: That withdrawal should be reflected in
13 | the amended schedules that were filed last night.

14 | THE COURT: All right. So I guess we just need to
15 | figure out at least --

16 | MS. STAFFORD: Of course.

17 | THE COURT: I need to understand whether the Court
18 | has to file an order reflecting the withdrawal of that claim,
19 | and so I am hereby asking my staff to figure that out and
20 | reach out to you for any additional proposed order that might
21 | be necessary in that regard.

22 | MS. STAFFORD: And we'd be happy to submit anything
23 | if anything further is required.

24 | THE COURT: Thank you.

25 | So now we have the 23rd?

1 MS. STAFFORD: Yes, Your Honor. The 23rd objection
2 seeks to disallow 500 claims that are exact duplicates of
3 other claims.

4 THE COURT: Okay. I'm sorry. So as to the remaining
5 responses, the remaining aspects of the 21st, you will provide
6 the certification with the proposed order or --

7 MS. STAFFORD: So this is a deficient claim
8 objection, so we're happy to provide a certification that
9 they've been re-reviewed and that there's insufficient bases
10 for each of these claims as well.

11 THE COURT: Thank you. And so I suppose you could
12 include in that order my so ordering the withdrawal of the
13 other claim, and then that would satisfy my paperwork
14 concerns.

15 MS. STAFFORD: That sounds perfect, Your Honor.

16 THE COURT: Thank you.

17 MS. STAFFORD: The 23rd Omnibus Objection, as I
18 noted, it seeks to disallow 500 claims that are exact
19 duplicates of other claims filed by the same claimants. We
20 have five responses that were filed. The first of these was
21 filed by Cooperativa de Seguros Multiples, and we have reached
22 out to the debtor in order to resolve their concerns.

23 THE COURT: The claimant.

24 MS. STAFFORD: The claimant. I'm sorry.

25 We've removed proof of claim 25007, and we've swapped

1 two claims such that 21148 will be disallowed and 24275 will
2 be a remaining claim. And that should be reflected in the
3 Revised Proposed Order and Schedule filed last night.

4 THE COURT: So this is a Cooperativa de Seguros
5 claim?

6 MS. STAFFORD: That's correct, Your Honor.

7 THE COURT: Okay. So with those swappings in and
8 out, that objection will be resolved?

9 MS. STAFFORD: That's correct.

10 THE COURT: And those will be reflected in the same
11 order.

12 MS. STAFFORD: Yes.

13 THE COURT: All right. Are we all right? Can we
14 proceed? We can proceed? Okay.

15 Okay. Thank you.

16 MS. STAFFORD: No problem. The next three objections
17 that were filed were filed by individuals by the last names
18 Caraballo Martinez, Bravo Quiles and Centeno. Each of those
19 we understand were incorrectly flagged as exact duplicates and
20 we've withdrawn our objections to those claims as reflected in
21 the schedules filed last night.

22 THE COURT: Very good.

23 MS. STAFFORD: The last response filed was filed by
24 Maritza Barris Rosario. The response does not address the
25 substance of the action and simply notes the claimant's

1 service as a teacher.

2 We're deeply mindful of the concerns Ms. Barris
3 Rosario raises, but nothing in the claims raises the claim
4 that the claims are exact duplicates or that Ms. Barris
5 Rosario reserves her right to assert the claim under the
6 surviving claim. So I assert the objection should be granted,
7 not withstanding the response.

8 THE COURT: I've reviewed the Response and Reply to
9 the Response, and I sustain the objection as to the claim.
10 The two claims duplicate --

11 Apparently they can't hear on Court Solutions. Is it
12 a volume issue or a can't-hear-at-all issue? All right.
13 We're having trouble getting it unmuted.

14 MS. STAFFORD: Okay.

15 COURTROOM DEPUTY: It's claiming it's unmuted.

16 THE COURT: I don't think anyone's sitting on the
17 edge of their chair to hear how I resolve this claim, so let
18 me just finish.

19 So the objection is sustained as to the two claims of
20 Ms. Barris that duplicate her earlier claim 152207, which will
21 remain on file. And you'll reflect this in the revised order
22 with the certificate.

23 MS. STAFFORD: That's correct, Your Honor.

24 THE COURT: Okay. So let's just wait one second to
25 see if there's anything we can do about the Court Solutions

1 problem.

2 This is a test. I'm going to ask somebody who's
3 listening on Court Solutions if they hear this to I guess --
4 okay. The person who is monitoring it, court staff, should
5 text or e-mail us to let us know if she can hear. So we're
6 good?

7 All right. I'm told it's working again so we can
8 proceed. I think we are up to the 24th Omnibus.

9 MS. STAFFORD: That's correct, Your Honor. The 24th
10 Omnibus Objection seeks to disallow 500 duplicate claims.

11 THE COURT: I'm sorry. A little slower and a little
12 louder.

13 MS. STAFFORD: The 24th Omnibus Objection seeks to
14 disallow 500 claims filed against the Commonwealth that are
15 exact duplicates of other claims. Seven responses were filed,
16 and upon review of each of those responses, the claims were
17 withdrawn from the objections last night. We actually also
18 re-reviewed the claims subject to objection and withdrew
19 additional claims.

20 And we'll be happy to submit a proposed order and a
21 certificate per Your Honor's request.

22 THE COURT: Very good. Subject to the submission of
23 the certification, the Court will sustain the objections
24 listed in the revised order, and I'll look forward to those
25 submissions.

1 MS. STAFFORD: Thank you, Your Honor.

2 On the 25th Omnibus Objection to claims, this is also
3 an objection to 500 exact duplicate claims filed against the
4 Commonwealth by the same claimant. One response was filed,
5 and upon review of that response, we've withdrawn our
6 objection, as noted in the schedules filed last night. We've
7 also re-reviewed, as we re-reviewed all of the exact duplicate
8 objections, and removed additional claims from these
9 objections -- from this objection. And we'll be happy to
10 provide a certificate with the proposed order and amended
11 schedules.

12 THE COURT: And I will sustain the objection and
13 disallow the claims subject to that certification coming in.
14 Thank you.

15 MS. STAFFORD: Thank you.

16 The 26th Omnibus Objection also seeks to disallow 500
17 claims filed against the Commonwealth that are exact
18 duplicates of other claims filed by the same claimant. Only
19 one response was filed, which again, upon review, we realized
20 was not in fact an exact duplicate.

21 And as to the amended schedules filed last night, we
22 reviewed our objections and we reviewed all the claims subject
23 to objection. And we reviewed additional claims, and we will
24 file a certificate as well.

25 THE COURT: Thank you. We will look forward to that

1 submission, and with that, sustain the objection and disallow
2 the claims properly subject to objection.

3 MS. STAFFORD: With respect to the 27th Omnibus
4 Objection sought to disallow 299 claims of other claims filed
5 by the same claimant, five responses were filed. The first
6 listed on agenda is filed by the University of Puerto Rico
7 Retirement System. They objected solely on the basis that --
8 or responded solely on the basis that they had filed claims
9 through two different systems, and they wanted to confirm that
10 there would be no assertion that one system was not valid and
11 the other system was valid.

12 They did not dispute that the claims were
13 duplicative, and because they did not dispute the claims were
14 duplicative, we would request the Court grant the objection,
15 not withstanding the response.

16 THE COURT: I've review the Response, and the
17 objection is sustained. The trust is conceding that the
18 claims are duplicative, and therefore, they should be
19 disallowed in the order to be submitted.

20 MS. STAFFORD: With respect to the -- thank you, Your
21 Honor. And with respect to the remaining four responses,
22 these are all responses that indicated that the claims were
23 not in fact duplicative, and upon review of those responses,
24 we have withdrawn those claims from our objection, and also
25 re-reviewed the claims subject to this objection and submitted

1 revised amended schedules withdrawing additional claims. And
2 we'll provide a certificate for the Court as well.

3 THE COURT: Thank you. And so subject to that
4 submission and the submission of the revised proposed order,
5 the Court will sustain the objections to the remaining claims.

6 MS. STAFFORD: Thank you, Your Honor.

7 The 28th Omnibus Objection seeks to disallow 23
8 claims that are exact duplicates of other claims filed by the
9 same claimant against HTA. Only one response was filed, also
10 by the University of the Puerto Rico Retirement System, on the
11 same bases as the prior objection. Namely, that they filed
12 claims through both -- two systems and wanted to confirm that
13 one claim -- one system would not be viewed as more valid than
14 the other.

15 They do not dispute, again, that the claims are
16 duplicative, and as a result, we would request that the
17 objection be granted notwithstanding the response.

18 THE COURT: The objection is sustained. And so you
19 will provide me with the certificate and revised proposed
20 order.

21 MS. STAFFORD: We will do so, Your Honor.

22 THE COURT: Thank you.

23 MS. STAFFORD: Yes. The 30th Omnibus Objection to
24 claims seeks to disallow 133 claims, exact duplicates of other
25 claims filed by the same claimant. Only one response was

1 filed, again by the University of Puerto Rico Retirement
2 System, raising same concerns about filing claims through two
3 different systems. But again, Your Honor, it does not dispute
4 the claims are duplicative, so we would request that the
5 objection be granted, notwithstanding the response filed.

6 THE COURT: The objection is sustained, and I look
7 forward to the submission.

8 MS. STAFFORD: Yes, Your Honor.

9 THE COURT: Thank you.

10 MS. STAFFORD: And I also wanted to note on the 28th
11 Omnibus Objection, we also have swapped two claims upon
12 reaching agreement with the United States of America. Two
13 claims -- one claim from the disallowed category to the
14 allowed category, and vice versa. And that's reflected in the
15 schedules filed with the Court.

16 THE COURT: And so that will be reflected in the
17 order that comes in with the certificate?

18 MS. STAFFORD: Yes, Your Honor.

19 THE COURT: Thank you.

20 MS. STAFFORD: Moving on to the 31st Omnibus
21 Objection to claims, this seeks to disallow 500 claims, exact
22 duplicates of other claims filed by the same claimant. Only
23 one response was filed, and that response requested that we
24 also swap the claims disallowed and that would survive, which
25 we have done. And we've filed an amended schedule to that

1 effect.

2 We've also re-reviewed all these claims that are
3 asserted to be exact duplicate claims for any issues, and
4 we'll be happy to provide Your Honor with a certificate
5 indicating that review.

6 THE COURT: The objection is sustained, and I will
7 look forward to the submission.

8 MS. STAFFORD: Thank you, Your Honor.

9 And finally, with respect to the 34th Omnibus
10 Objection to claims, which objects to a number of claims that
11 are late filed duplicate bond claims filed against COFINA,
12 only one response was filed. And that response does not
13 address the argument that the claims are duplicative of a
14 master claim. It simply states that the claims amend a
15 previously filed claim.

16 The original claim and the amended claim both assert
17 liabilities arising from COFINA bond bearing CUSIP numbers
18 governed by master proof of claim and a claim already
19 disallowed as duplicative of master proof of claim. And so we
20 submit it should be granted, notwithstanding the response.

21 THE COURT: The objection is sustained, including as
22 to the duplicative claim of the Cooperativa that filed the
23 response. And I look forward to the certificate and revised
24 order.

25 MS. STAFFORD: Thank you.

1 THE COURT: I believe that takes us through all of
2 the contested objections.

3 MS. STAFFORD: I believe it does.

4 THE COURT: Thank you.

5 And this also brings us to four minutes to 12:00, so
6 we will get an extra four minutes in our lunch break. Please
7 be ready to resume at one o'clock. Have a good lunch,
8 everyone. We're adjourned.

9 (At 11:55 AM, recess taken.)

10 (At 1:09 PM, proceedings reconvened.)

11 THE COURT: Buenas tardes. Please be seated.

12 And so the next item on our Agenda is the APJ's
13 Motion for Relief from the Automatic Stay. And so I would
14 invite the movant to come forward. We've allotted a total of
15 25 minutes.

16 MR. INDIANO VICIC: Thank you, Your Honor. My name
17 is David Indiano of Indiano & Williams. I represent the
18 association that represents the active judges here in Puerto
19 Rico, the APJ, Association of the Puerto Rico Judiciary.

20 With us today, we have the president of the board of
21 directors, as well as the treasurer, Judge Salgado and Judge
22 Rosado in the back row to your left, Your Honor.

23 THE COURT: Good afternoon, Your Honors. And good
24 afternoon, Mr. Indiano.

25 MR. INDIANO VICIC: I know that the Court in these

1 lift stay hearings focuses on the *Sonnax* factors and analyzing
2 the determination to lift a stay. I want to spend some time
3 in analyzing one of the more fundamental issues that we
4 believe precedes and even supercedes some of these
5 considerations in this particular matter, and that is the
6 issue of judicial independence.

7 The simplicity of our position has not been
8 appreciated by the Oversight Board. The Board has no
9 authority to force any change in the Judges' compensation or
10 pensions. This is based on some very fundamental historical
11 and legal facts, none of which can be seriously questioned.

12 Number one, Puerto Rico is a territory.

13 THE COURT: May I just ask you to hold on for one
14 second?

15 MR. INDIANO VICIC: Yes.

16 THE COURT: And I've done something to my computer
17 that is problematic. Okay. I will start a new page. I take
18 notes on the computer, and it is just not cooperating with me.

19 MR. INDIANO VICIC: No problem, Your Honor.

20 THE COURT: It still is not cooperating with me. My
21 apologies.

22 MR. INDIANO VICIC: No problem, Your Honor.

23 THE COURT: And of course your clock is not running.

24 Okay. I think it's time for pen and paper. All
25 right. Thank you.

1 MR. INDIANO VICIC: I'll proceed?

2 THE COURT: Yes.

3 MR. INDIANO VICIC: As I was saying, number one,
4 Puerto Rico is a territory. Number two, Congress' power to
5 govern Puerto Rico is found under the Territorial Clause,
6 which is plenary power.

7 Number three, in establishing the level of
8 self-governance for Puerto Rico, Congress specifically stated
9 in Law 600, and I quote, Said Constitution shall provide a
10 republican form of government. That's at Section Two.

11 And point four, only then and if the President of the
12 United States found that the republican form of government,
13 quote, conforms with the Constitution of the United States,
14 could he submit the proposed Constitution to Congress for its
15 approval.

16 Section three, inherent in a republican form of
17 government under the United States Constitution are three
18 coequal, independent branches of government. It envisions the
19 separation of power, and the independence of the judiciary is
20 of paramount importance to the functioning of this republican
21 form of government.

22 As clearly expressed, we know, and as I've drafted in
23 many of the motions, language of the Founding Fathers,
24 Hamilton in particular, and others at the very commencement of
25 the American experiments, in exercising its plenary powers to

1 allow Puerto Rico to have a measure of self government,
2 Congress used the most expansive reaches of this plenary power
3 to create and require this republican form of government. And
4 this would essentially mirror the Government of the United
5 States itself.

6 Congress did not make an exception for the Puerto
7 Rico judiciary. It is impossible to ignore this, nor is it
8 possible to imagine a Congress for a moment envisioning
9 anything other than a judiciary with independence.

10 This is one of the key grievances going back to the
11 Declaration of Independence against King George, that he had
12 the judges in their pockets. The notion of judicial
13 independence is engrained in the American version of the
14 republican form of government.

15 Once you start there, the next steps in our analysis
16 are easy to see. After using the maximum contours of its
17 plenary power to establish a republican form of government
18 under the Territorial Clause, Congress passed law after law
19 using parts of that plenary power, smaller slices to create
20 other laws to govern Puerto Rico.

21 One of these slices was used when it passed PROMESA,
22 a rather large slice, but that's all it did. It did not undo
23 the basic essence of what it had done in the 1950s concerning
24 the nature of Puerto Rico and its form of government.

25 THE COURT: Just one -- I'm sorry. Something has

1 | happened with our phone line again.

2 | MR. INDIANO VICIC: No problem.

3 | THE COURT: All right. I'm sorry. We have to take a
4 | little break to get that fixed up. And maybe -- I'm sorry.
5 | Apparently we need a few more minutes for the technician to
6 | check something, so if you'd like to have a seat.

7 | MR. INDIANO VICIC: Sure.

8 | THE COURT: Thank you for your patience.

9 | So have we got the sound or -- still waiting.

10 | This is a test. Whoever is monitoring in New York
11 | and whoever is monitoring in the overflow room, let us know.
12 | Apparently New York can hear and we're back on the Court
13 | Solutions Line. Is that correct? All right.

14 | Mr. Indiano.

15 | MR. INDIANO VICIC: Thank you, Your Honor. I'm going
16 | to step back to what I was saying so it can flow.

17 | THE COURT: Yes.

18 | MR. INDIANO VICIC: When it passed PROMESA, what it
19 | did was take a piece of that plenary power and pass a very
20 | important law, a significant law, but it did not undermine the
21 | basic form of government that Congress had required for Puerto
22 | Rico back in the 1950s, concerning the not implicitly -- or
23 | explicitly upset the concept of judicial independence, and
24 | there was no reason for Congress to do so.

25 | And when it's all said and done, this Court has

1 approved whatever plan, fiscal plan it approves, but all of us
2 remaining here need an independent judiciary. The success or
3 the failure of the economy that eventually emerges from this
4 procedure is what the business world and the citizens of
5 Puerto Rico need in order to have this economy that goes
6 forward be successful.

7 The Board has stated that the judges are not unique
8 in their across-the-board attempts to cut pensions. They are
9 wrong. And there is no sense of entitlement or superiority
10 that attaches to this uniqueness. Judicial independence is
11 more of a cross to bear by the judiciary than some lofty
12 perch, as the Board suggests. It is a burden of every judge
13 to leave all personal and financial interests behind when he
14 or she dons the robes. And I know I'm speaking to the choir,
15 Your Honor.

16 No act of the legislature or the executive should
17 attempt to impinge upon that independence. And no board, also
18 a creature of Congress, but not Congress itself, can undo what
19 Congress has done by requiring the establishment of a
20 republican form of government with the intrinsic requirement
21 of independent judiciary.

22 Our position is clear. There's no authority for the
23 Board to touch the judges' pensions. And while the Board has
24 argued disingenuously, I think, that it would be the Court,
25 not the Board, that would ultimately cut the pensions, that

1 is, at best, a semantic dodge.

2 If the Board recognizes the limits of its power and
3 authority with respect to this fundamental aspect of the
4 necessity for judicial independence of Puerto Rico based on
5 the Congressional mandate, it would not be pushed, so we would
6 not be here, they would not be here opposing this motion to
7 stay.

8 While I do not believe that the *Sonnax* factors are
9 even necessary to address because of this preceding legal
10 mandate of Congress, I do want to make some comments on the
11 opposition and draw some of those factors --

12 THE COURT: And I also would appreciate your
13 attention to the prematurity argument, which may have shifted
14 now given the announcement of the RSA today.

15 MR. INDIANO VICIC: I'm sliding right into that.
16 That's one of my next comments, Your Honor.

17 But one of the first things the Board says at page 19
18 of their brief is they say the issue of whether Puerto Rico's
19 Constitution grants a priority enforceable in Title III is an
20 issue that virtually all major creditors' groups cannot afford
21 to ignore. It could totally derail all pending discussions.

22 This shows a lack of focus by the Board on the source
23 of law for this position of the judges, which is the
24 Congressional exercise of its plenary power of the Territorial
25 Clause, which required a republican form of government, with

1 its inherent separation of powers and judicial independence.

2 It is not about the Puerto Rico Constitution. It is
3 about what Congress did. This is not a priority question
4 under the Puerto Rico Constitution. This is a mandate of
5 Congress, and we have to look at it.

6 Congress never -- I mean PROMESA was never intended
7 to undo that when it was passed. And there is no derailling
8 here. The procedures have gone forward. There are only about
9 386 judicial positions of the active judges, and those are the
10 only ones that are being held up here.

11 Obviously, as we've seen today, proceedings are going
12 forward. There's settlement negotiations all over the place.
13 And this is a purely legal issue. Our case that was filed
14 under the Federal Court as a declaratory judgment action.

15 What we need -- and it can be expedited briefings.
16 That is, there's no discovery required. There's no trial
17 required. It's simply briefing on whether our position is
18 accurate, correct or not. That could be expedited. It would
19 not hold up these proceedings in any way.

20 And despite the judges' claim that the judges are not
21 unique, I have no reservations saying that they are. No other
22 branch of the government, looking at some of these other
23 discussions that there are today, can advance the position the
24 judiciary has of judicial independence. There are no flood
25 gates waiting to open because of this position.

1 Let me now address specifically what you asked me to,
2 Your Honor. On the point one, *Sonnax* factor one, they say in
3 their opposition that we are premature. We know that's not
4 true anymore. Today they basically said they're going to have
5 their Plan of Adjustment in 30 days, whatever they can do.

6 So at one point we were too early, and now we are
7 almost too late. But surely that premature argument is
8 clearly gone. They want us to only be able to raise this
9 purely legal question of Congressional power, and their power,
10 in the context of the objections in a Plan of Adjustment.

11 We have a right to have this decided in a federal
12 court with a right of appeal to the First Circuit, so there's
13 no question --

14 THE COURT: Am I not a federal court from which
15 there's a right of appeal to the First Circuit?

16 MR. INDIANO VICIC: No, that's all I'm asking --

17 THE COURT: I'm not?

18 MR. INDIANO VICIC: I'm not saying that you're not,
19 Your Honor.

20 THE COURT: Okay.

21 MR. INDIANO VICIC: I'm not saying that. All I'm
22 saying is we have a right to have this issue decided by a
23 federal court so we can make it clear that this power does not
24 reside with the Board.

25 There is no need to delay this resolution so we are

1 not subjected to the constant pressure to cede to cuts on
2 their pensions when there is no power to do so. The
3 noninterference with Title II -- Title III case, in *Sonnax*
4 factor two, in that case, the Board, I think, grossly
5 exaggerates the impact of lifting the stay. If you follow
6 their logic, no stay would ever be lifted.

7 And this Board can be -- this matter can be resolved
8 as a matter of law in discovery. We are at 386 potential
9 spots in the judiciary of active judges. It's a very de
10 minimis amount of human beings that are subject to this
11 situation in the judicial branch.

12 In terms of judicial economy, a declaratory judgment
13 will relieve the Court, relieve the Board of its
14 self-perceived need to have these across-the-board cuts, in
15 their vision of fairness, when it's not a matter of fairness.
16 It's a matter of the form of government that we have in Puerto
17 Rico, as mandated by Congress, requires something that they
18 can't interfere with. And this relieves them of the burden of
19 trying to do that with their, I think, understandable need to
20 want to be fair across the board, but the judiciary is in a
21 different situation.

22 In balancing the harms, the -- there is no
23 conceivable way for me to look at this small amount, de
24 minimis amount of judges as derailing the process which is
25 going forward. And the only branch of government that has to

1 be protected is the judiciary in terms of its independence.

2 It's the one branch that can't stand up for itself.

3 That is what all the case law and all the language of
4 the Founding Fathers was clear on. And that is also expressed
5 in the Puerto Rico Supreme Court case as well. This branch
6 cannot stand up for itself and must be protected, and the
7 independence of the judiciary must be protected. And the only
8 way to do it is to make it clear to the Board that they are
9 treading on grounds which are not in their ambit to deal with.

10 As we said in our Reply Brief, in ending, there is
11 precious little economic impact by the government and
12 tremendous benefit in preserving an independent judiciary that
13 Puerto Rico must have in order to marshal the respect and
14 confidence of all citizens of this yet-to-be-created world
15 left after restructuring is complete.

16 This new economy will be stillborn, absent an
17 independent, coequal branch of government in the judiciary.
18 The active judges of Puerto Rico, through the APJ, request to
19 this Honorable Court to lift the stay and allow its
20 declaratory judgment action to proceed so that can be clear.
21 Thank you.

22 THE COURT: Thank you.

23 MR. BIENENSTOCK: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. BIENENSTOCK: Martin Bienenstock of Proskauer

1 Rose, LLP, for the Oversight Board.

2 Your Honor, movant spent the bulk of the time talking
3 about the merits of the case and then got to the *Sonnax*
4 factors. I'm going to start with the Motion for Stay Relief,
5 and then I'll make some very brief comments about the merits
6 of the case.

7 The problem, the essential reason why we oppose the
8 motion and we urge the Court not to grant it is that its logic
9 doesn't hold up, neither for why relief from the automatic
10 stay is beneficial to the process, is essential for the
11 Judge's Association, or that the Board needs to be told to
12 stop, that it's treading on waters that it has no power to
13 tread on.

14 Starting with I guess the Court's question about the
15 impact of the potential timing now of a proposed plan of
16 disclosure statement being filed, that would powerfully argue
17 for this Court to determine the issue that the Association
18 wants determined.

19 And let's compare -- and let's see why and let's
20 compare the two alternatives. Movant could go off to the
21 federal court in which it filed its Complaint, and it could
22 prosecute its action against the Oversight Board.

23 Now, parenthetically, we don't think it would go too
24 far because of Section 106(e) of PROMESA, because they're
25 essentially saying they want a District Court to hold that the

1 Oversight Board can't promulgate or certify a fiscal plan that
2 impacts judges' pensions. That's precisely what 106(e) says
3 no federal District Court can do. But they want to do that,
4 and it's them against the Oversight Board.

5 Let's compare that to what we're proposing. We're
6 going to propose a plan. As this Court knows, and as movants
7 know, there are many parties in interest, some of them are in
8 the courtroom now, who assert priorities on different grounds.
9 True, no one else has the judicial independence ground. But
10 we know the GO creditors say they have liens on all the assets
11 and they have -- even if they don't have liens, they have
12 first priority to all available resources.

13 We know that other creditors say they have an
14 entitlement to get clawback funds back, because the clawback
15 funds from HTA should never have been taken in the first
16 place. All of these creditors and more are going to make
17 their cases for priorities unless we button down everything in
18 settlements. And everyone will be able to defend against
19 other people's asserted priorities and prosecute their own
20 asserted priorities. That's the way it should be. That's the
21 way it is at confirmation hearings.

22 What movant is asking for is a one-off against the
23 Oversight Board without the other competing parties asserting
24 priority being present. It just makes no sense. They would
25 be -- they would either have to try to intervene in movant's

1 action, or there would be this ruling in a case where they
2 were not parties.

3 And then the first thing Your Honor would have to do
4 is decide, well, are they really bound by another case in
5 which they were not parties, that the judges have first
6 priority to this money? So starting there just doesn't work.

7 Second, what is the need to know today before there's
8 a confirmation, or to start an action today before this is
9 resolved in confirmation for them to have a ruling that the
10 fiscal plan that proposes an impact on pensions cannot be
11 certified or has to be invalidated?

12 Everyone else in this case who has tried that has
13 been turned down by both this Court and the First Circuit
14 Court of Appeals, for reasons I don't have to go into.
15 Everyone in the courtroom knows them, and Your Honor wrote
16 some of those decisions.

17 THE COURT: I'm sorry. The sound has dropped again,
18 so hold that thought.

19 MR. BIENENSTOCK: No problem.

20 THE COURT: This is a test. Would whoever is
21 monitoring Court Solutions and the remote courtrooms please
22 check in and let me know whether you can hear?

23 COURTROOM DEPUTY: Judge, do you want to try one more
24 time?

25 THE COURT: This is a test. Would whoever's

1 monitoring please let us know whether we can be heard in the
2 remote locations? Are we getting a yes?

3 COURTROOM DEPUTY: We are, yes.

4 THE COURT: All right. We are back on.

5 Mr. Bienenstock.

6 MR. BIENENSTOCK: Sure. I think the most efficient
7 thing for me to do now is I'm going to run through the 12
8 *Sonnax* factors and then briefly address the merits.

9 Factor one, whether relief would result in complete
10 or partial resolution of the issues. As I was just
11 explaining, a one-off determination that the judges' salaries
12 can't be reduced, or pensions can't be reduced, would not be a
13 complete resolution of the issue because you have the GO
14 claims that say we get first claim to all available resources,
15 no matter what.

16 So if the resources they say they have first priority
17 to have to first go to the GOs, there's obviously a dispute.
18 It would not resolve everything. And if the Court -- if
19 there's one thing that is safely predictable, it's that
20 everyone is going to have a reason why their ruling doesn't
21 mean that they come ahead of all the other creditors asserting
22 priority for a variety of reasons.

23 *Sonnax* factor two, the lack of any connection with or
24 interference with the bankruptcy case. Well, this is
25 completely connected and interferes with the bankruptcy case.

1 It will interfere with the confirmation hearing.

2 And what's more, Your Honor, what if they're in the
3 middle of their action in the Federal District Court or it's
4 been resolved and it's on appeal and Your Honor is posed with
5 priority issues at confirmation?

6 How does this Court now give deference to whatever
7 has been decided in another court or what might be decided and
8 reversed or affirmed on appeal? It would only create
9 confusion and needless complexity.

10 *Sonnax* factor number three, whether the foreign
11 proceeding involves a debtor. Well, that's inapplicable.

12 Four, whether a specialized tribunal has been
13 established. Absolutely not. So that goes in favor of not
14 terminating the stay.

15 Five, whether the debtors' insurance carrier has
16 assumed full responsibility. Well, there is no insurance here
17 to pay the judges' pensions, so that goes in favor of not
18 giving stay relief.

19 Six, whether the action essentially involves third
20 parties rather than the debtor. No, this most definitely
21 involves the debtor. So in favor of the Board again, of not
22 granting stay relief.

23 Seven, whether the litigation can prejudice the
24 interest of other creditors. Absolutely, it could, for the
25 reasons I've discussed. Reason not to grant stay relief.

1 Eight, whether a judgment in the foreign action is
2 subject to equitable subordination. Well, no foreign action,
3 so it's inapplicable.

4 Whether movant's success in the foreign proceeding --
5 this is nine -- would result in a judicial lien. Again,
6 inapplicable.

7 Ten, the interest of judicial economy and the
8 expeditious and economical determination of litigation for the
9 parties. For the reasons I explained, it's much more
10 efficient to do it in one confirmation hearing where
11 everyone's priority claims are on the table, rather than in
12 bifurcated proceedings where not everyone has a chance to be
13 in both.

14 Eleven, whether the foreign proceedings have
15 regressed. Well, again, that's inapplicable.

16 And 12, the impact of the stay on the parties and the
17 balance of hurt. Your Honor, there, I think, the fact that
18 virtually every factor that was applicable -- every factor
19 that was applicable was in favor of not giving stay relief
20 shows that the balance of hurt suggests that the stay should
21 not be modified.

22 Now, Mr. Indiano mentioned that he thinks it's sort
23 of a distinction without a difference that we said that if the
24 pensions are reduced, it would be the Court doing it and not
25 the government. And I just want to explain why it's -- it's

1 most definitely a distinction with a difference, and that's
2 why we said it.

3 And we didn't say it to put the onus on Your Honor
4 either. We said it because the Supreme Court said it in the
5 *Bekins* decision. There, which was one of the first tests of
6 Chapter Nine after the Supreme Court had ruled the first
7 Chapter Nine was unconstitutional in *Ashton*, the issue again
8 came up.

9 How can a city, a municipality, avail itself of a
10 bankruptcy discharge without running afoul of the notion in
11 the Federal Constitution that states can't impair contractual
12 obligations? And the answer that the Supreme Court gave is
13 the state, the municipality is not doing it. It's the Federal
14 Court that's doing it. And that's the reason why we made that
15 distinction. It had -- go ahead, Your Honor.

16 THE COURT: It seemed to me that Mr. Indiano's
17 arguing here today that even the Court would not have the
18 power under PROMESA to alter the judicial pensions; that by
19 making the basic specification that the Puerto Rico
20 Constitution has to embody a republican form of government,
21 Congress has implicitly decreed that only Congress itself
22 could invade judicial independence, the compensation element
23 of judicial independence here in Puerto Rico.

24 MR. BIENENSTOCK: Well, the answer to that, Your
25 Honor, is that Congress wrote in Section Four of PROMESA,

1 that PROMESA, quote, Shall prevail over any general or
2 specific provisions of territory law, state law, or regulation
3 that is inconsistent with this Act, end of quote.

4 So Congress responded to Mr. Indiano and said, we are
5 passing this federal law that will allow you, among other
6 things, to impair contractual obligations throughout the
7 territory, and it prevails over any inconsistent territory
8 law, of which the Puerto Rico Constitution is one.

9 Now, I'll wrap up just with the most basic
10 observation on the merits, Your Honor. Movant starts with
11 judicial independence and the republican form of government.
12 We respect both principles. No issue. But the dots are not
13 connected.

14 They're saying somehow that by a debt restructuring
15 dealing with the inadequacy of funds to pay all debts in full,
16 that if you reduce a judicial pension, the judge will no
17 longer be independent. We reduced the legislature's budget by
18 ten percent last year. They challenged it in this court. The
19 Court ruled in favor of the Oversight Board. It was appealed
20 to the First Circuit. The First Circuit affirmed.

21 The -- we have to do what we have to do to deal with
22 the truism that we don't have enough money to go around. It
23 would be one thing if the Puerto Rico legislature or the
24 Governor were saying, I don't like some judicial decisions
25 that have come down in Puerto Rico courts lately, so I'm going

1 to lower the judges' salaries. That's not what's happening
2 here. What's happening here is there is a global discount of
3 debt because we don't have enough to go around. It doesn't --
4 there's no logic showing why that impacts independence.

5 And as Mr. Indiano knows, because we've shared with
6 him the cases, the jurisprudence in the Federal Courts, when
7 challenges to changes in judicial salaries have come up, is
8 that as long as the judges are not being targeted, there's no
9 impact on their independence. And there's no -- and they
10 haven't made a suggestion here that they're being targeted.
11 And of course, we would never do that and we haven't done
12 that.

13 So again, finally, we haven't decided how we're going
14 to treat their pension claims. We appreciate what they do,
15 who they are, their arguments, but to isolate that one issue
16 and to send it to another court, albeit a federal court, when
17 not all the parties affected by the impact would be there to
18 be heard, and it could certainly complicate a confirmation
19 hearing, you know, that, with all of the *Sonnax* factors I
20 mentioned, I think makes fairly clear that this is not a good
21 situation for stay relief.

22 THE COURT: One question for you before Mr. Indiano
23 comes back. You said that there hasn't been a decision made
24 as to how to treat these judges' pension claims. I think I
25 heard Mr. Gordon this morning saying that the deal with the

1 Retiree Committee includes alterations to the Judicial
2 Retirement System. So is that something separate?

3 MR. BIENENSTOCK: Yes. And Your Honor heard
4 correctly and it is separate.

5 We're anticipating, not in concrete, but we're
6 anticipating that there's going to be a class of retirees, and
7 that's what Mr. Gordon was talking about this morning. But
8 movants, our understanding is that movants are active judges
9 who are concerned about what happens to their future pension,
10 and that is a separate class. And we haven't made a final
11 determination on that.

12 THE COURT: Thank you for clarifying that.

13 MR. BIENENSTOCK: Thank you.

14 MR. INDIANO VICIC: Your Honor, in response to your
15 question, Mr. Bienenstock cited parts of PROMESA. He didn't
16 talk about overriding Congressional mandates regarding the
17 creation of Puerto Rico's system of government. They were
18 hoping to form a government -- he mentioned territorial, state
19 regulations. None of those are Congress, so that was
20 completely unresponsive to your question.

21 THE COURT: Well, his point, as I understood it, is
22 that Congress may have made specifications for the Puerto Rico
23 Constitution, but Congress very specifically said in PROMESA
24 that PROMESA can override any law that is the law of the
25 territory, and there's no reason not to consider the

1 territory's Constitution, which was developed here, a law of
2 the territory.

3 Is that a fair summary, Mr. Bienenstock?

4 MR. BIENENSTOCK: (Nodding head up and down.)

5 THE COURT: He's nodding yes.

6 MR. BIENENSTOCK: That's perfect, yes.

7 THE COURT: He said it was perfect. Thank you. I
8 get a gold star.

9 MR. INDIANO VICIC: And that shows the problem here.
10 We are not talking about the Puerto Rico Constitution. We're
11 talking about what Congress required to be created in terms of
12 the form of government, republican form of government.

13 We're a step above the Puerto Rico Constitution in a
14 sense, and I don't mean that in a superiority sense, but in
15 terms of entering into a legal analysis, we're talking about
16 what Congress did when it mandated a creation of a form of
17 government of Puerto Rico, a republican form of government,
18 not a separate law.

19 It said whatever you come up with, it has to be this.
20 And you can't -- the laws that they're talking about in the
21 Constitution, that's why when we start -- immediately I
22 started hearing about bond claimants, they're trying to put
23 judges in this basic argument, which is the form of
24 government, on the level of a Puerto Rico constitutional
25 claim. That's not really what we're talking about. We're

1 talking about what Congress did in the creation of what we
2 have in Puerto Rico, and the requirements that this be a
3 three-part separated powers of government, with judicial
4 independence as an inherent quality of the judicial branch.

5 That's where the analysis gets off track, because
6 they keep trying to drag us into this analysis. You're like
7 everybody else. You have to compete at a confirmation
8 hearing. That's not what we're talking about. We're talking
9 about Congress stepped in before all that and created
10 something which has not been undone by PROMESA anywhere.

11 THE COURT: Well, there will be other people who will
12 want to compete with that proposition, and so that is one
13 important consideration of the forum in which this debate
14 should occur.

15 MR. INDIANO VICIC: It's difficult to imagine an
16 entity that's going to be able to compete given -- on that
17 historical basis, on that legal basis from a mandate of
18 Congress.

19 THE COURT: You may think you have a slam dunk, but
20 due process demands that other people who want to challenge
21 that proposition be able to challenge it in a way that
22 everyone who was concerned can be bound by the results.

23 MR. INDIANO: Everybody has told me, whatever this
24 is, it's not a slam dunk. I know it's a difficult and unique,
25 perhaps, perspective, but that doesn't mean it's not correct.

1 I'm just trying to shift the argument to where I think it has
2 to be with respect to what Congress created when it
3 established whatever we have here in terms of form of
4 government.

5 So I understand the desire to put us on some kind of
6 level where we're just competing with equal components of this
7 process. That's not what Congress created. And we talked
8 about in the -- I understand the --

9 THE COURT: I'll need you to wind up.

10 MR. INDIANO VICIC: Yes. I'll just wind up with the
11 issue of who's pushing the changes. We already know -- and
12 Judge, I think you picked up on this. They say they don't
13 know what they're going to do with the retirement of the
14 judges. They have already essentially cut a deal with one
15 group of retired judges, and we're the active judges. So it's
16 still disingenuous to say they don't know what they're doing.

17 They're going to have to try to force cuts in the
18 pensions. And they want us to connect the dots, how do
19 pensions effect judicial independence. There is a plethora of
20 case law describing how that has affected, going to the *Booth*
21 case, United States Supreme Court, and tons of other cases.

22 So that is to be seriously questioned. Any effect on
23 judicial compensation is an attack on the independence of the
24 judiciary, and that's established by case law.

25 Thank you very much.

1 THE COURT: Thank you.

2 And I thank both counsel for these arguments, and I
3 will take this matter under submission.

4 MR. INDIANO VICIC: Thank you.

5 THE COURT: The next Agenda item is Roman IV, number
6 16, the Motion for Relief from Stay of the AMPR.

7 MR. BARRIOS RAMOS: Good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MR. BARRIOS RAMOS: Counsel, Jose Luis Barrios in
10 representation of Asociacion de Maestros de Puerto Rico and
11 its union, Asociacion de Maestros de Puerto Rico-Local
12 Sindical.

13 THE COURT: Good afternoon, Mr. Barris Ramos.

14 MR. BARRIOS RAMOS: Your Honor, we are pleased to
15 announce that AMPR and the Oversight Board have reached an
16 agreement in principle regarding the settlement that we, in
17 our view, will address in a complete form, the teachers'
18 relief or request for relief in the Motion for Relief of Stay.

19 As part of this settlement agreement, in principle,
20 the AMPR and the Oversight Board have identified a mechanism
21 to complete the payment of this unused, accrued sick leave to
22 the teachers that retired on or about the summer of 2017 and
23 were impacted by Law 26. However, at this point, we will need
24 the Government's cooperation to implement this mechanism.

25 We are hopeful that given Mr. Friedman's earlier

1 statement in court, that it's the government's position to
2 protect all its pensioners, that their cooperation will come
3 in an immediate basis.

4 Besides that, Your Honor, I believe that it is the
5 position of the AMPR that this settlement agreement in
6 principle is a win-win situation, like Mr. Bienenstock
7 mentioned earlier, referencing other agreements that unions
8 have reached with the Oversight Board. And we will have
9 nothing further.

10 I think counsel for the Oversight Board --

11 THE COURT: Thank you.

12 Good afternoon, Mr. Possinger.

13 MR. POSSINGER: Good afternoon, Your Honor. Paul
14 Possinger of Proskauer Rose on behalf of the Oversight Board.

15 I can confirm what Mr. Barrios has said. We have
16 reached an agreement with respect to how to handle the
17 underlying claims that relate to this motion and that will
18 result in the disposition of the motion itself.

19 We are awaiting confirmation from the government that
20 they will cooperate with the settlement payments themselves.
21 That has not yet occurred. We think that is the last detail
22 to iron out. Once that happens, we should be able to
23 implement this.

24 And then counsel had mentioned to me that you may
25 request a status report on this, or that we might agree to

1 submit a status report before the next Omnibus to inform Your
2 Honor as to where this has ultimately come out.

3 THE COURT: Yes. So shall I mark this, put over to
4 the July 24th Omni with a status report to be filed by July
5 17th at the latest?

6 MR. POSSINGER: That works for us, Your Honor.

7 THE COURT: Thank you.

8 MR. POSSINGER: Thank you.

9 THE COURT: Mr. Friedman.

10 MR. FRIEDMAN: Your Honor, Peter Friedman on behalf
11 of AAFAF. Again, you know, I mentioned this to Mr. Possinger
12 and I mentioned this to labor counsel, at this point, the
13 government -- I certainly don't have authorization or client
14 authorization to indicate what the government's going to do.

15 The government has been put in a position where the
16 Board has said here's a new expense to pay --

17 THE COURT: I'm sorry. I need you to talk a little
18 louder. Thank you.

19 MR. FRIEDMAN: Sorry, Your Honor.

20 Where the Board has said pay something, but hasn't
21 said where does that money come from, does something else get
22 cut -- we know they want to do this in furtherance of the
23 agreement they signed this morning, and there are parts of
24 that agreement that may be appealing, but we've expressed our
25 concerns already about some of the overreaching aspects of

1 that.

2 So obviously we will cooperate in terms of providing
3 a status update, but again, I want to be clear and not leave a
4 misimpression by silence that AAFAF and another department of
5 the government has authorized this payment in light of sort of
6 the circumstances and the uncertainty about where the money's
7 going to come from, what other funds may be, you know,
8 impinged upon or impeded by doing this, and sort of the
9 absence of a clear direction as to how that works out.

10 And like I said, we will participate in providing any
11 necessary information for a status update in a timely
12 manner.

13 THE COURT: And I assume that you will participate in
14 discussions in between, to the extent there can be clarity in
15 some agreement reached as to the fiscal impact of this
16 agreement and sources of funding?

17 MR. FRIEDMAN: Yes, Your Honor.

18 THE COURT: All right. I think that's the most that
19 can be asked at this moment, and I hope that there will be
20 some progress and clarity one way or the other. And I will
21 look forward to the July 17 status report.

22 MR. FRIEDMAN: Thank you, Your Honor.

23 THE COURT: Thank you. And I thank you all.

24 And so that takes me through Roman IV on the Agenda,
25 and I will turn the bench over to Judge Dein for the items at

1 Roman V. And then I will return for the items at Roman VI.

2 Thank you.

3 HONORABLE MAGISTRATE JUDGE DEIN: I'm authorized for
4 a seventh inning stretch.

5 MR. DESPINS: Good afternoon, Your Honor. Luc
6 Despins with Paul Hastings on behalf of the Committee. And
7 I'm going to handle -- there are three motions for stay in the
8 three different cases, but I think it makes sense to handle
9 them all together.

10 HONORABLE MAGISTRATE JUDGE DEIN: I think so.

11 MR. DESPINS: And I would like to reserve maybe five
12 minutes for rebuttal at the end.

13 So the three motions seek to stay the proceedings
14 that the Board and the Committee started together all around
15 the time where the statute of limitations was about to expire
16 in these three cases.

17 And just to give you a sense of magnitude, Your
18 Honor, there were 26 adversary proceedings that were filed in
19 these three cases, 1,500 defendants, more or less. In the
20 Commonwealth case, there were GO clawback actions, eight of
21 those adversary proceedings against 752 defendants.

22 There were also GO lien challenges where the Board
23 and the Committee said the GO holders are not secured
24 creditors. Seven different adversary proceedings there
25 against 368 defendants in the ERS case. There were only

1 clawback actions. These are actions to get back the money
2 that was paid to the holders of ERS bonds. Seven adversary
3 proceedings against 235 defendants.

4 And finally in the HTA case, there was only a lien
5 challenge, four different adversary proceedings against 143
6 defendants.

7 Since we filed the Motion to Stay -- the motions,
8 plural, to stay, there were obviously objections filed, and
9 we'll address that in a minute. But also I wanted to mention
10 to the Court, because I'm not sure you know, that FGIC filed
11 an answer in the HTA -- I see you're nodding so, therefore,
12 you know about that.

13 HONORABLE MAGISTRATE JUDGE DEIN: You answered that
14 on --

15 MR. DESPINS: And also there was a motion to dismiss
16 filed by a group of GO bondholders to the lien challenge as
17 well, so I wanted to tee that up.

18 So the first, easiest part, Your Honor, is the Motion
19 to Stay in the ERS case. We believe that is unopposed, so we
20 would -- we'll submit a separate form of order, if Your Honor
21 is agreeable, but I wanted to put that aside.

22 HONORABLE MAGISTRATE JUDGE DEIN: I agree. Let's put
23 it aside.

24 MR. DESPINS: Okay.

25 HONORABLE MAGISTRATE JUDGE DEIN: I think whatever is

1 sort of agreed with the others, we'll go along with that.

2 MR. DESPINS: So now let's deal with the others. And
3 what we said in the Motion to Stay is that we wanted an
4 extension of time to serve the various complaints on these
5 1,500 defendants. And that regardless of that, we thought
6 that there should be a stay of the proceedings.

7 We raised a number of issues, and I'd like to address
8 some that were not addressed as well, looking back, as they
9 should have. But one of the points we made is that there is
10 already litigation, for example, in the ERS case, as to
11 whether bonds are valid or not.

12 If that litigation produces a result, why, good or
13 bad, why bother the people in the clawback until we know the
14 outcome of that underlying litigation? So that's one reason
15 to stay the service of the complaints on the clawback. And
16 generally that applies to the clawback.

17 I would say that the most disruptive type of action
18 that we can take is serving the clawback actions, because
19 you're telling people that got money three years ago that they
20 have to give it back. And that is cause -- it's not the issue
21 of using a first-class stamp and mailing the Complaint to the
22 person. It's what comes back after that. That is going to
23 engender a lot of legal fees and costs to deal with the trauma
24 that that will cause.

25 I would say the main focus is on the clawback, and

1 | also there's a reason to stay the clawback, which is that
2 | there's an underlying action that relates to the clawback.
3 | Let's see how that action turns out before we, you know,
4 | disrupt the various people that are the targets there.

5 | And the other point to be made is that -- is again,
6 | it's not only the service of this. Of course we can serve the
7 | 1,500. We can put as many people as needed on that. That's
8 | not the point. We don't need until necessarily November to do
9 | that, but it's everything that will be caused by the service,
10 | service at different times, you know, coordinating all of
11 | that.

12 | HONORABLE MAGISTRATE JUDGE DEIN: Your papers say
13 | that you needed the time to -- you have two separate issues,
14 | right? You have service and then you have the stay of
15 | litigation?

16 | MR. DESPINS: Correct.

17 | HONORABLE MAGISTRATE JUDGE DEIN: But your papers
18 | were pretty clear, I thought, that said you wanted the stay
19 | for service for really administrative reasons.

20 | MR. DESPINS: Correct. I'm getting to that.

21 | So one of them is you have to coordinate service,
22 | because people are served at different times. Their time to
23 | answer runs -- so there's a whole coordination effort. But on
24 | top of that, it's the issue of -- and, you know, I think when
25 | we got approval to do this in New York, I remember Judge Swain

1 looking at me and saying -- there was a reference to some
2 circus. I forget if it's -- but basically saying, look,
3 you're doing this because the statute of limitations is about
4 to expire.

5 The answer is yes. I fully expect that what's going
6 to happen after that is an effort to resolve all of this
7 rather than having -- and I forget the expression. That's
8 where the circus analogy came in. But I fully expect there
9 will be efforts to settle all of this rather than litigate in
10 39 different directions. I think that was the analogy that
11 was used.

12 And that's part of it as well. Mr. Bienenstock says
13 that he thinks he will file a plan or may file a plan in the
14 next 30 days or so. That will deal with a lot of the issues,
15 I would say with 99 percent of the issues that are built into
16 these complaints.

17 So it does make sense to see whether these issues can
18 be settled or not before we go all out and start dealing with
19 1,500 defendants, and the motions to dismiss, motions for
20 summary judgment, motions on the pleadings, et cetera, et
21 cetera. We're happy to do that in a sense. We can do it, so
22 it's not an impossibility. But from a case management point
23 of view, we don't think that makes sense.

24 Now, obviously, does it have to be November 1st? No.
25 It could be -- you know, I understand their concern, which is

1 | hey, if there's a plan that's going full steam ahead while I'm
2 | stayed here, that's not good. But there's a safety valve in
3 | the Order that says they can move to terminate the stay and
4 | the Court for good cause can terminate the stay.

5 | So there is a safety valve, and that is one of the
6 | biggest arguments here, which is what is the prejudice to
7 | them. Yes, nobody likes a stay, but there's a very precise
8 | safety valve that says that either the plaintiffs or the
9 | defendants can terminate the stay.

10 | The defendants have to show good cause. I don't
11 | think that's a -- we didn't try to define what good cause is
12 | because that could take weeks to agree with everyone as to
13 | what that means. But the point is the Court has a lot of
14 | discretion.

15 | And that's where I started with this, and I would end
16 | with this: There is no point in me arguing a lot about this
17 | because it's completely within your discretion as to whether
18 | it should be a stay or not. We think it makes sense, but if
19 | Your Honor doesn't think it makes sense, then we'll operate
20 | accordingly. But I think the Court has a lot of discretion in
21 | giving us more time to serve and on staying the litigation
22 | generally.

23 | HONORABLE MAGISTRATE JUDGE DEIN: All right. But
24 | just clarify for me why you think you shouldn't serve as
25 | opposed to just -- because clearly you can serve an order that

1 says, I'm serving this, the litigation is stayed. There's no
2 answer due for 30 days until after the stay is lifted.

3 MR. DESPINS: We can serve. I would just say that in
4 the context of clawback actions, it causes a lot of trauma
5 because we're telling people that -- it's one thing to say
6 that you're not going to get paid or you're going to get paid
7 50 cents on the dollar. It's quite another to tell people on
8 top of that, you need to give back X millions of dollars that
9 you received three years ago.

10 So that's why in the clawback context, we would
11 really urge the not serving until there's greater clarity,
12 because depending on what happens with the Plan, it may be
13 that these actions are never pursued to completion. So why,
14 you know, inconvenience these people and cause all this --
15 because I know, I know what's going to come back because I
16 already receive calls from some of these people who want to
17 get me disbarred and all that.

18 So I'm telling you that there's a lot of agitation
19 over the clawback actions. So if we cannot serve those folks,
20 I think that would aid in the process.

21 And the lien avoidance, we can serve. It's just that
22 I believe the Plan will address a lot of these issues, so why
23 not see what's behind door number one, which is the Plan. We
24 may not like it, in which case we can go forward, or people
25 may think it makes sense to settle it.

1 HONORABLE MAGISTRATE JUDGE DEIN: Let me ask you, in
2 the Proposed Order that you had that you wrote that the
3 plaintiffs themselves could decide to go forward without Court
4 approval, what's the rationale behind that?

5 MR. DESPINS: Well, because it's -- we're happy to
6 make it subject to good cause. We're happy to make it -- I
7 thought we had fixed some of that, but we're happy to make it
8 completely parallel, Your Honor.

9 HONORABLE MAGISTRATE JUDGE DEIN: All right. All
10 right.

11 MR. DESPINS: All right. Thank you.

12 MR. STANCIL: Good afternoon, Your Honor. Mark
13 Stancil from Robins Russell for the Ad Hoc GO Group.

14 I'm going to try to cover some of the issues that I
15 think are common to several of the actions, and my colleagues
16 will address additional issues as well. So I won't cover all
17 the waterfront, but I'll try to hit the main ones.

18 Let me start, if I may, with what I gather has now
19 been abandoned, which is the idea that these Complaints cannot
20 be served. I would refer the Court to paragraph 20 of the
21 motion which says that claims that good cause exists to extend
22 the service deadline, because serving all domestic defendants
23 within 90 days would be difficult, if not impossible -- I take
24 it that is no longer the assertion. And so with -- I hate to
25 beat a dead horse, but let me just --

1 HONORABLE MAGISTRATE JUDGE DEIN: I'm with you on
2 that.

3 MR. STANCIL: Okay. Let me add one point in
4 particular that's specific to the lien avoidance action.
5 There's a lien avoidance and clawback. On the lien avoidance
6 action, their Complaint alleges an address for each defendant
7 because everybody had to file one proof of claim. So it's a
8 question of sending out 400 first-class envelopes.

9 Perhaps they need an order of the Court to say that
10 the proof of claim address suffices for service, but I think
11 they will get certainly consent from everybody here at our
12 table today. We think that should be done immediately. We
13 don't think there's any justification, certainly no good
14 cause.

15 The suggestion was made that there is -- this is a
16 modest form of relief. Respectfully, we disagree. We've been
17 trying to get clarity as to our liens for two years. We
18 actually filed a declaratory judgment action in June of 2017,
19 which the Oversight Board and others claimed was not ripe.
20 They were correct in the judge's view and in the First
21 Circuit's view, which was affirmed, but now it's clearly ripe
22 because they've moved to avoid our liens. We need this
23 resolved.

24 Mr. Despins says, well, we should wait for the plan
25 of adjustment, but we know they contest the liens. We know,

1 | therefore, I assume we can infer, that a plan of adjustment
2 | will not give us credit for the liens. Waiting to see a plan,
3 | the premise of which is that there is no lien, doesn't
4 | accomplish anything. We need to get this done.

5 | There's another suggestion made that -- well, the
6 | claim objection that's been filed against certain of the bonds
7 | would obviate the need for the lien avoidance action. That's
8 | both wrong and inefficient.

9 | Let me tell you why on each count. It's wrong
10 | because there are certain bonds that they have not objected to
11 | for which a lien claim has been asserted, so whatever the
12 | result of the claim objection, the Court will still need to
13 | address the lien issue with respect to the as yet unobjected
14 | to bonds.

15 | But let me tell you why I think it's just a bad idea
16 | as well. We're going to need clarity as to the status of
17 | those claims. Their assumption is, which we respectfully
18 | disagree with and hopefully we'll get around to getting in to
19 | Court to prove it, but their assumption is, well, they'll win
20 | the claim objection.

21 | My assumption is they're going to lose it
22 | spectacularly, and then we're going to need to come in and say
23 | not only do we have claims on all of these challenged bonds,
24 | but they are secured claims for the reasons that we've
25 | outlined.

1 We have outlined them in a Motion to Dismiss that we
2 and the Ad Hoc Group of Constitutional Debtholders filed
3 yesterday. These claims have been well explained. There's no
4 efficiency gain except to roll the dice and hope that they can
5 get out from some of their bond claims before having to
6 address the lien claims, with respect to the remainder. We
7 should just get on with this and not have a six or 12 month
8 delay baked in at the end of the claim objection.

9 HONORABLE MAGISTRATE JUDGE DEIN: Let me ask you
10 this. I think you filed two motions to dismiss last night,
11 right? Or was it just one?

12 MR. STANCIL: I intended to file, I think we intended
13 to file only one --

14 HONORABLE MAGISTRATE JUDGE DEIN: I thought it was
15 two different groups --

16 MR. STANCIL: We filed with the Morrison & Foerster
17 firm, a joint motion.

18 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

19 MR. STANCIL: And there may have been, if I have my
20 facts straight, a corrected version filed that had to do with
21 the signature block.

22 HONORABLE MAGISTRATE JUDGE DEIN: Among the late
23 night filings.

24 MR. STANCIL: Well, we weren't noticing it for this
25 Omnibus Hearing. I want to be clear about that.

1 HONORABLE MAGISTRATE JUDGE DEIN: Okay. My question
2 is whether it makes sense to take some time to try to figure
3 out how to bring it in a uniform manner to the Court to have
4 these issues resolved, as opposed to having hundreds of -- or
5 even five or six or seven different motions.

6 And that, to me, is why it might make sense to stay
7 this for a finite period of time. I think everybody's now
8 agreed that it's certainly -- an indefinite stay doesn't make
9 any sense, but I'm trying to figure out whether it makes the
10 most sense to do a finite stay within which period -- first of
11 all, anybody can move to lift the stay if they think their
12 issue is of critical importance. But it's also a time when
13 some plan for bringing it before the Court in a unified
14 fashion can be developed.

15 MR. STANCIL: We certainly don't oppose a unified
16 briefing schedule for the core legal issues, because that's
17 what we have long sought. But may I suggest, what they're
18 trying to do, and we see this with the shift in positions
19 today, they're trying to play out every day of the 90 days of
20 service, plus some extra, plus a -- they're just slow-rolling
21 this to death.

22 What I would submit is why don't we give them a
23 deadline to serve that's maybe even a little ambitious. How
24 about July 15th they serve, and then we'll have a Motion to
25 Dismiss due 30 days after that? We can all get on a common

1 schedule.

2 I've already filed my Motion to Dismiss, and
3 everybody is free to look at it as they want. We're all for
4 that. But what we're hoping to avoid is this shifting
5 rationales, let's wait for the plan, let's wait for this,
6 let's wait for this. Let's get to court.

7 They've built this entire process, the plan, on claim
8 objection, lien objection, litigation, litigation, litigation
9 that they filed, but they are running like mad from having to
10 answer any of it and we need to get on with it.

11 Some people are in the room negotiating this behind
12 the scenes. We are not. They will not talk to us. They will
13 not talk to many others. You will hear this from others as
14 well. So I can infer from that what's going to be in this
15 plan in the next 30 days.

16 We need to get this thing in court. They've chosen
17 the litigation. We've got to get it moving. So we are all
18 for a unified deadline, Your Honor, but let it be soon so we
19 can actually get this done, instead of just teeing up two
20 years of litigation that starts some indefinite form in the
21 future.

22 HONORABLE MAGISTRATE JUDGE DEIN: Do you know when
23 the original service deadline was?

24 MR. STANCIL: I think it was May 2nd, so I think --
25 I'm not supposed to do math on the fly, but August 1. July

1 31st. Somewhere in the late July, early August timeframe.

2 So if they could even get service done by that
3 deadline, I mean, I think we could have motions to dismiss due
4 on a standard deadline and we'd be just fine.

5 May I just briefly address one other point, Your
6 Honor? With respect to the clawback actions, there are -- and
7 this is a problem that we have in this case that we're trying
8 to resolve. There are clawback actions filed against
9 challenged bonds, bonds that are already the subject of a
10 claims objection.

11 We're fine in staying the clawback portion until
12 they've litigated the claim objection that they've filed, but
13 there are other bonds, the PBA bonds in particular, and the
14 2011 GOs that the UCC has objected to and the Oversight Board
15 has not yet objected to. They filed a clawback action against
16 those bonds.

17 Count I says these bonds are all invalid, and the
18 counts that follow are premised on that. We need that to be
19 moving forward as well. So that's why we've objected to any
20 stay of those clawback actions insofar as they are challenging
21 additional bonds, but we're all pretending that they haven't.

22 So I don't know what else to say except the bonds are
23 either null and void in their view or they are not, but we
24 can't have it both ways. And we need -- again, they're the
25 ones who filed all the lawsuits. Let's start getting it

1 moving, these questions, and get some answers and get this
2 case over with.

3 HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

4 MR. STANCIL: Thank you, Your Honor.

5 MS. MILLER: Good afternoon, Your Honor. Atara
6 Miller from Milbank on behalf of Ambac. I don't want to
7 rehash territory, but I do think this is an important juncture
8 to make the point that what we're seeing here is really a
9 continuation of the strategy that the Oversight Board has
10 adopted since day one of these Title III cases. Namely, push
11 everything to confirmation; put a plan; get some small,
12 impaired accepting class, and steamroll everyone else. Put
13 everything into a massive confirmation that cannot be heard.

14 Mr. Bienenstock earlier this morning made a
15 representation about using mediation to facilitate settlements
16 and have a colloquy after that with Judge Swain where Judge
17 Swain said, I'm going to take you at your word that you're
18 going to use that.

19 I take Mr. Bienenstock at his word, but I listened
20 very carefully to what he said, and what he said was we're
21 going to file a plan. And for those of you who didn't sign on
22 because you weren't included in the discussions and because
23 this door was slammed in your face, then after the plan is
24 filed, you can come in and talk to us about it. Then we'll go
25 to mediation and we'll try to get you on side with a plan

1 that's already been proposed.

2 From day one, creditors have been standing here
3 trying to get declarations, trying to get other adjudications
4 about their rights, about their property interests, about
5 their liens. The answer has been, they're not ripe. They're
6 not ripe. You can't listen to it.

7 In HTA in particular, one of the critical pieces of
8 their argument with respect to ripeness was well, you can't
9 bring a claim related to whether or not the fiscal plan
10 effects a taking because the fiscal plan is just a blueprint.

11 I reviewed a number of transcripts from the fall of
12 2017, the summer, fall and winter of 2017 in front of Your
13 Honor, oral argument in front of Judge Swain, and oral
14 argument to the First Circuit. The Oversight Board
15 consistently took the position that the fiscal plan is a mere
16 blueprint with no legal effect.

17 There was a determination, Judge Swain's Order
18 dismissing our Complaint related to clawback, and HTA relied
19 on that representation by the Oversight Board. Now they file
20 a motion that not only says that the blueprint actually has
21 binding legal effect, but that the fiscal plan and the budgets
22 actually reorder priority and can negate liens.

23 That's an issue. If they're going to throw out
24 grenades, they have got to pull the pin and litigate it. They
25 cannot throw a grenade, attach it to a trigger and put in a

1 motion that says we litigate when we feel like it. There has
2 to be some resolution and some determination.

3 This is not -- you know, Mr. Bienenstock argued in
4 connection with respect to the second to last Lift Stay Motion
5 that, you know, there are going to be a lot of people arguing
6 about priorities. We're not arguing about priorities. We're
7 arguing about property rights.

8 This is like COFINA. These are the core fundamental
9 threshold questions. Is the money, even the Commonwealth's,
10 to be dealt with in a plan? This is not saying the
11 Commonwealth has a fixed amount of money and we're going to
12 fight about who has a right to it.

13 We are entitled to litigate whether or not the money
14 that the Commonwealth is going to deal with -- and for the
15 Court to address in the Plan, whether it even belongs to the
16 Commonwealth or does it belong to the revenue bondholders.
17 Does it belong to the instrumentalities to which that money
18 was transferred by statute?

19 HONORABLE MAGISTRATE JUDGE DEIN: As it now stands,
20 where do you see these issues being resolved? Some have been
21 brought in various places. What's your overall view of the
22 path of these issues?

23 MS. MILLER: I think they should be litigated in
24 stand-alone cases where the property interests can be
25 addressed appropriately, and then you take that, once you

1 define what the property rights are, and you put out a plan.

2 HONORABLE MAGISTRATE JUDGE DEIN: But who
3 participates in those cases? Is it all of the bondholders?
4 How do you --

5 MS. MILLER: I don't think all of the bondholders --
6 I don't think unaffected bondholders need to participate in
7 litigating over some of the threshold legal questions about
8 property interests, right? It's either the Commonwealth's
9 property or it's not.

10 I expect that both the UCC and Oversight Board, and
11 potentially even AAFAF, will come in and adequately represent
12 the interests of those who say it's the Commonwealth's
13 property. If people want to intervene, they wouldn't even
14 have standing to intervene.

15 HONORABLE MAGISTRATE JUDGE DEIN: But who would be
16 the parties -- they're serving hundreds of people with these
17 adversary complaints. Does everybody have the right to come
18 in and raise the same defenses that you want to raise?

19 MS. MILLER: Well, I think it depends what box you're
20 in, right? So they're filing against different boxes. No, I
21 don't think a GO creditor has standing to come into the HTA
22 box and argue about anything.

23 HONORABLE MAGISTRATE JUDGE DEIN: Right. But do all
24 of the HTA, or do all of the GO? I want to make sure that
25 everybody gets an opportunity to weigh in once or twice --

1 MS. MILLER: Right.

2 HONORABLE MAGISTRATE JUDGE DEIN: -- as opposed to
3 hundreds of times.

4 MS. MILLER: So I think everybody does have the right
5 to weigh in and should be given that opportunity, which is why
6 I think Mr. Despins already said, service isn't the issue. In
7 HTA in particular, there are only 143 defendants and they know
8 who we are.

9 I think all of us should be served, and then there
10 should be -- I don't dispute that there should be some
11 coordinated schedule and some process put in place for trying,
12 to the extent possible, to coordinate the briefing. That
13 doesn't require an extended stay. It requires service, you
14 know, at a minimum, according to the rules and on the schedule
15 provided for under the Federal Rules.

16 And then, you know, the ordinary briefing with an
17 expectation and maybe guidance from the Court about what you
18 would expect in connection with briefing. I mean, certainly
19 that's what's happening with respect to PBA, and I think it's
20 working effectively.

21 HONORABLE MAGISTRATE JUDGE DEIN: And apart from
22 these actions, so we have the claims objections, which are
23 raising some of the issues. Where else are they being raised?
24 Is it -- what's your understanding as to whether or not any of
25 these issues are on a path to be resolved?

1 MS. MILLER: Well, our view, I mean, we filed a Lift
2 Stay Motion, or our position is we don't have to lift the stay
3 because the stay simply doesn't apply with respect to PRIFA,
4 which is not directly addressed, but raises a number of the
5 same issues in terms of whether or not the statutes that
6 transferred certain revenue streams to instrumentalities
7 transferred property interests, such that those revenues are
8 no longer property of the Commonwealth.

9 So that's one avenue. And certainly they're
10 currently up on appeal with respect to HTA in the First
11 Circuit. The First Circuit hasn't ruled. The -- Assured's
12 decision with respect to special revenues is subject to
13 reconsideration, but ours addressed much more broadly all of
14 these issues and whether or not, A, put them to the First
15 Circuit but also argued that in the event that the First
16 Circuit didn't want to, at a minimum, we should get a
17 declaration that we're free to pursue those claims. In state
18 court, we're awaiting decision. Oral argument on that was in
19 January.

20 So I think there are other places where these would
21 be litigated. And I'm not suggesting that they can't also be
22 litigated in front of this Court. Right. So if we want to
23 start a process, we can do that. I just don't know why
24 everything has to be dealt with in the context of
25 confirmation.

1 These are threshold questions that define what you
2 can put in your plan. I mean, if COFINA had to be decided
3 before we could turn to the Commonwealth, the issues of the
4 revenue bonds also need to be decided before we can get to a
5 Commonwealth plan.

6 THE HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

7 MR. CALLEN: Good afternoon, Your Honor. Jason
8 Callen from Butler Snow, here on behalf of Financial Guaranty
9 Insurance Company.

10 I just want to address, within the context of HTA,
11 some of the questions that you've been having back and forth
12 with colleagues of mine here at the counsel table.
13 Specifically looking, in the context of HTA, do you need a
14 stay for some type of management purposes?

15 As you heard from Ms. Miller, we've got only 143
16 defendants in those cases. They're all -- there are four lien
17 avoidance actions in HTA. That's it. Four lien avoidance
18 actions.

19 They all raise pretty much the same -- exact same
20 arguments in their complaints. Those can be easily managed.
21 The summons can be served. Parties can get together and we
22 can enter into an appropriate case management order that can
23 tee those issues up. So I don't believe that any stay is
24 necessary for management purposes.

25 Then the next question would be is a stay required in

1 HTA for resolution purposes, whether because there will be a
2 resolution through settlement or resolution through other
3 litigation?

4 Well, I can tell Your Honor we feel very confident
5 there's not going to be a resolution through settlement or
6 something through the plan of adjustment, because
7 as Ms. Miller already laid out, the Board has made clear, and
8 all the plaintiffs through this Complaint that they filed in
9 HTA, that the plan of adjustment is going to declare that the
10 funds that are in dispute in the HTA cases belong to the
11 Commonwealth, that they don't belong to the HTA, and that
12 there are no valid liens held by the bondholders.

13 We know that that's coming. We don't need to see a
14 plan of adjustment, because the plaintiffs have said that
15 those are coming down the line because of the fiscal plans
16 that have been certified and because of the budgets that have
17 been certified. While we heard earlier those weren't written
18 in stone, they now say they are written in stone and that
19 those will dictate the plan of adjustment.

20 So there is no settlement. We haven't been
21 contacted, as we noted in our papers, about any possible
22 settlement all this time. Well, we have, as others here at
23 counsel table have been talking about seeking some type of
24 declaration, some order from the Court as to the validity of
25 our liens.

1 So these over here -- we hear a lot in this Court
2 about gating issues. The validity of these liens, who owns
3 this money, in -- these are gating issues that have to be
4 decided in litigation before this Court. And the appropriate
5 way to do it is in this litigation that has actually been
6 filed, is now pending, and that we have also answered and
7 filed a counterclaim and third party claims that address the
8 specific provisions of PROMESA and other applicable laws that
9 show that those liens are valid.

10 I also would say, Your Honor, that there really isn't
11 any other litigation where we can be assured that these issues
12 raised in the complaints in HTA, and in our answers and
13 counterclaims and third party claims, where we can be assured
14 that those issues will be decided.

15 Yes, it's true that there were adversarial
16 proceedings in HTA that were seeking access through special
17 revenue provisions under the Code incorporated through
18 PROMESA. That is currently still up on appeal in the First
19 Circuit. But it is highly likely that those decisions that
20 will ultimately be rendered by the First Circuit will not
21 decide the core issue of whether the liens are valid and who
22 owns the funds here that are in dispute.

23 Judge Swain did -- specifically did not decide that
24 issue when she granted the defendant's Motion to Dismiss in
25 that case, and the First Circuit specifically didn't decide

1 that issue. So there's no outstanding litigation where those
2 issues can be resolved.

3 So for those reasons, we would say there shouldn't be
4 a stay. The plaintiff should get on with serving summons and
5 complaints. And then we should agree upon or try to reach an
6 agreement upon an appropriate case management order so that
7 this litigation can proceed.

8 The one thing, and I'm hesitant to even mention this,
9 Your Honor, but just because it's my one opportunity to get in
10 front of you, although we strongly believe there shouldn't be
11 a stay, if there is a stay, we have filed, as you know, a
12 counterclaim, but also some third party claims, a limited
13 number of third parties that we have included with our claims.
14 And we would like, if there is any stay that's entered, we
15 would like it to be clear that we can still serve copies of
16 the Summons and our third-party claims on that limited number
17 of individuals so that we don't run into any 90 days issues or
18 anything of that sort.

19 And if Your Honor has no further questions --

20 HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

21 MR. NATBONY: Your Honor. Good afternoon, Your
22 Honor.

23 HONORABLE MAGISTRATE JUDGE DEIN: I think we're at
24 1.5 or something.

25 MR. NATBONY: I think I asked for one, but I'll take

1 1.5. I'm William Natbony from Cadwalader representing
2 Assured.

3 Your Honor, Assured looks forward to getting to these
4 important issues as quickly as possible, but obviously would
5 participate in any common management plan or briefing schedule
6 that the Court issues to coordinate this.

7 In my one minute now, I just wanted to point out that
8 in our limited objection, we pointed out to some language in
9 the proposed orders in the three motions that still provides
10 that the plaintiffs, as a whole, can cause any stay to be
11 lifted at their option without making a showing of good cause.
12 And whereas any single plaintiff or defendant would not have
13 to show -- would actually have to ask for and get good cause.

14 So in the interest of uniformity, we would hope that
15 that language would be adjusted in paragraphs three and four
16 to allow for anyone, whether it be a single plaintiff, a
17 single defendant, or all plaintiffs to actually make an
18 application and show good cause to lift any stay that Your
19 Honor orders. Thank you.

20 HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

21 MR. ZOUAIRABANI TRINIDAD: Your Honor, if I may.
22 Attorney Nayuan Zouairabani of McConnell Valdez representing
23 AmeriNational Community Services, LLC.

24 We have requested three minutes to speak, but it
25 seems some of my colleagues have taken some time. I would ask

1 you to grant us the indulgence to at least have some time to
2 respond on our limited response.

3 HONORABLE MAGISTRATE JUDGE DEIN: Go ahead.

4 MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.

5 HONORABLE MAGISTRATE JUDGE DEIN: I think we've given
6 a joint extra three minutes.

7 MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.

8 Your Honor, movants had two bites at the apple to try
9 to meet their burden. They have failed each time. Under Rule
10 4(m), they need to show good cause. Good cause requires good
11 faith and a reasonable basis for noncompliance to serve.

12 Now, first of all, that second prong, based on the
13 representations that were made to the Court, have gone out the
14 window. They just admitted that they can serve and they just
15 need basically to get around to do that. So right now the
16 good cause requirements for granting an extension under Rule
17 4(m) have gone out the window.

18 Second of all, they argue in their pleadings that the
19 fact that they are involved in other Title III matters
20 prevents them to handle these adversary complaints. Well,
21 that is a predicament of their own creation. Movants
22 specifically asked the Court to approve some procedures in
23 order to pursue the Complaints the way they have.

24 Now, if that creates an issue, that is more akin to
25 mistake or inadvertence and would not constitute good cause to

1 grant an extension under Rule 4(m). Movants also would not
2 comply with permissive extension due to the fact of their
3 failure to account for the prejudice that the extension would
4 have on AmeriNat.

5 Now, Your Honor, AmeriNat did not ask to be sued. It
6 was sued nonetheless, and it is ready to immediately respond
7 and defend itself on the Complaints.

8 Now, during the presentations to the Court, movants
9 argue that there's a safety valve in the procedures where the
10 stay could be lifted if the defendants show good cause. Now,
11 it is a little bit interesting, Your Honor, because those
12 procedures, what they intend to do is invert the standard. It
13 is movants who have the standard of good cause to get the
14 extension, not the defendants who have the standard of good
15 cause to get the stay lifted. Now, that should not proceed,
16 Your Honor.

17 Finally, AmeriNat is in a very particular
18 circumstance, Your Honor. Not only is it probably the largest
19 creditor of HTA, it can easily be served. Now, with that in
20 mind, Your Honor, I have to echo some of the things my
21 colleagues have mentioned, which is that the movants decided
22 to proceed with this, and at some juncture, they need to
23 address and actually answer the Complaints or a motion to
24 dismiss, or whatever responsive pleadings defendant chooses to
25 answer. As they say in my neck of the woods, at some point

1 they either need to put up or shut up, Your Honor. So I
2 believe that time has come now.

3 There is no basis for the stay. However, we would
4 not be opposed to some joint prosecution for the litigation in
5 order to have everything done orderly, Your Honor. And in
6 that sense, even if the Court were to consider a stay, we ask
7 that that stay be bifurcated. AmeriNat has very particular
8 defenses and a unique situation, and any such stay would be
9 prejudicial upon us, Your Honor. Thank you.

10 HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

11 MR. BIENENSTOCK: Your Honor --

12 HONORABLE MAGISTRATE JUDGE DEIN: Let me just make
13 sure, are there any other opponents?

14 (No response.)

15 HONORABLE MAGISTRATE JUDGE DEIN: We're done. Okay.
16 Go ahead.

17 MR. BIENENSTOCK: I had not been part of this, but
18 I've listened and wonder if I could have a few minutes both to
19 provide some information that might be helpful to everyone and
20 to respond to some unfounded accusations that were made
21 against my client.

22 HONORABLE MAGISTRATE JUDGE DEIN: Why don't you take
23 a couple of minutes.

24 MR. BIENENSTOCK: Thank you.

25 In terms of the information that might help everyone,

1 we know that the GO holders have asserted liens against the
2 property -- certain of the property taxes and the clawback
3 revenues. We've disagreed with them, but we know they assert
4 them, because they filed a Complaint that went up to the First
5 Circuit.

6 While we disagree with them, in the plan we file,
7 we're going to provide that they get property taxes and they
8 get clawback funds, because we have to pay them out of
9 something, so we might as well pay them out of the things they
10 say they have a lien on first. So that might make some of the
11 issues go away. I just raise it for that purpose.

12 And as far as the accusations that were made by
13 Ambac, just three or four quick responses. I was shocked to
14 hear about my client's -- the Oversight Board's strategy and
15 intentions. I don't know where they got this from, but they
16 ended up saying that we took some very small agreements with
17 some small classes with the intent of ramming through a
18 confirmation.

19 Well, how could anyone be so silly as to think that
20 Judge Swain would ever let us do that? That's never what we
21 wanted to do or intended to do, and that can never happen in
22 this Court. When we file a plan, to the extent there are
23 overarching issues, I've actually said it I think at prior
24 Omnibus Hearings, we might ask Judge Swain to tee up some of
25 the issues, such as clawback revenues, at the disclosure

1 statement stage, because we know they're overarching. They
2 have to be resolved. We might ask to tee up the GO priority
3 at that time, because we know it has to be resolved.

4 And everything should be done in an orderly, fair
5 way. We know the Court will require it. We want it that way.
6 The Board wants it that way. And all of the aspersions and
7 accusations to the contrary, I don't know where Ambac got
8 them, but they're just flatly wrong.

9 Second, Ambac voiced anger that when they raised
10 claims in the past, we didn't let them be adjudicated because
11 of ripeness. Two things about that. One is some of their
12 claims are just false. They claimed the right to turnover
13 under Sections 922 and 928. They lost. It was decided on the
14 merits.

15 Before they could have it decided by the First
16 Circuit, another litigant had it decided by the First Circuit
17 and Judge Swain was affirmed. So they've gotten
18 determinations on the merits on some of their most critical
19 issues.

20 Number two, the claims that were dismissed were
21 dismissed because this Court and the First Circuit found the
22 Court did not have subject matter jurisdiction to proceed. I
23 don't know if they're angry at the law, at Judge Swain
24 following the law, the First Circuit affirming the law or the
25 Oversight Board saying what the law is, but I -- where does

1 that anger come from? That was the law. The Court didn't
2 have jurisdiction to decide things that they posed that they
3 should have known in the first place. So it's just
4 inexplicable to us.

5 The other accusations made -- I'm over time, so I'll
6 just say we couldn't disagree more. But the Oversight Board
7 is going to propose a plan and ask for scheduling that is fair
8 to everybody and gets the issues resolved in the most
9 efficient way. That's always what it intended to do and that
10 is what it will do.

11 Thank you, Your Honor.

12 HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

13 MR. DESPINS: Just two seconds, Your Honor.

14 We think there should be a stay of some kind. It's
15 okay to build into the stay a case management process.
16 There's no problem with that. And we're also okay to start
17 serving the lien challenge summons.

18 So we're -- where we have concerns is serving the
19 clawback action, so I want to make sure that's not lost in
20 this. But your proposal to have a case management process
21 meet and confer, take place during that stay period, makes a
22 lot of sense. There's no doubt about that. So I don't
23 think --

24 HONORABLE MAGISTRATE JUDGE DEIN: There's nothing
25 that you've asked for that would prevent you from serving, is

1 | there?

2 | MR. DESPINS: No.

3 | HONORABLE MAGISTRATE JUDGE DEIN: I mean, you've
4 | asked for an extension of time to serve, so you're the one --
5 | within at least the initial 90 days, are the one that's making
6 | the decision as to who to serve or who not to serve, right?

7 | MR. DESPINS: Correct, but we don't want to let the
8 | 90 days pass without an order saying it's okay.

9 | HONORABLE MAGISTRATE JUDGE DEIN: I understand that.
10 | I want to make sure that I'm reading your proposed order
11 | correctly. You're not saying you can't serve within that
12 | period. So if you're making a distinction between the
13 | clawback cases and the lien avoidance cases, there's nothing
14 | that stops you from serving the lien avoidance matters
15 | promptly.

16 | MR. DESPINS: I think that's where the danger is,
17 | that I'm not in the weeds on that issue -- I think we have
18 | most of the addresses for the lien avoidance. I'm pretty sure
19 | of that. But I know for a fact we don't have all the
20 | addresses for the clawback actions, for example. And that's
21 | why I'm concerned about saying absolutely we can serve all the
22 | lien avoidance actions.

23 | We certainly don't think we could serve the 1,500,
24 | which includes the clawback, within that 90-day period,
25 | because we don't have all the addresses for the clawback. But

1 I think nobody is really pushing the clawback, in terms of
2 service, at this stage.

3 And in terms of lien avoidance, I want to leave
4 myself a little bit of room in case we don't have all the
5 addresses. I think we do, but I'm not a hundred percent sure.

6 HONORABLE MAGISTRATE JUDGE DEIN: All right.

7 MR. DESPINS: Thank you.

8 MR. STANCIL: Your Honor, may I make a constructive
9 suggestion?

10 HONORABLE MAGISTRATE JUDGE DEIN: That would be
11 good.

12 MR. STANCIL: May I suggest a meet and confer on -- I
13 don't know what to call this, but the unification procedure,
14 start right away, and we can report back to you hopefully with
15 a proposal at the next Omnibus? Because as you're aware, in
16 the selective claim objection, we're coming up to Boston in a
17 couple of weeks to talk about when we can start the procedures
18 on that.

19 It's been five months since they filed the claim
20 objection. I don't want to see the same thing happen on this
21 lien avoidance thing. So if there's going to be a meet and
22 confer, let's get it started so we can meet and come back with
23 something.

24 HONORABLE MAGISTRATE JUDGE DEIN: So what I'm
25 inclined to do is say let's enter a stay until September 1st

1 as of now. Prior to that, in time for the next Omni, I will
2 -- I'll enter an order shortly. I'll have to think it
3 through, but it would require a meet and confer and a proposed
4 joint case management proposal.

5 Before September 1st, parties can file motions for
6 relief from stay, but it really will have to be sort of an
7 emergency as to why you would -- why your issue needs to be
8 decided before we can have a uniform scheduling plan. And I'm
9 trying to figure out, as I'm sitting here, and I'm not doing a
10 really good job of it, of how this schedule fits in with all
11 of the other schedules that we're going to be discussing in
12 Boston. And I find myself unable to do that standing here.

13 I have to admit I started today thinking that there
14 was a real service problem with getting addresses, and
15 apparently that is not the motivating factor for this motion,
16 so I need to shift gears on that. But I think for planning
17 purposes, right now I will enter an order that there is a stay
18 of proceedings except for service as of September 1st -- up
19 until September 1st.

20 I will enter an order requiring case management
21 before that, with something to be addressed at the next Omni.
22 And at that time, if this stay is no longer appropriate,
23 within the case management order, we can revisit it at that
24 point as well. But as I see it now, that's sort of not a
25 great extension beyond the service period that's already in

1 place. Okay?

2 Somebody else needs to talk to me? Okay.

3 MR. KISSNER: Good afternoon, Your Honor. Andrew
4 Kissner, from Morrison & Foerster on behalf of the Ad Hoc
5 Group of Constitutional Debtholders.

6 Just a clarification. As Mr. Stancil said before, of
7 the five motions to dismiss we filed last night, we're
8 informed by our local counsel that there may have been an
9 error with one of them. The intention was to file a corrected
10 pleading sometime today. I don't know if that's happened yet.
11 I just wanted to confirm that by fixing this clerical error,
12 we wouldn't be violating the stay --

13 HONORABLE MAGISTRATE JUDGE DEIN: See, I don't want
14 you to do anything in a rush. I want you to get it right the
15 first time.

16 MR. KISSNER: I understand. Understandable. I just
17 don't want to violate the stay.

18 HONORABLE MAGISTRATE JUDGE DEIN: What are you
19 saying? You're going to withdraw something you filed last
20 night?

21 MR. KISSNER: No. I believe it's already happened.
22 There was literally a problem with the signature block. It
23 should be fixed by now, but in case it hasn't hit ECF yet, I
24 just didn't want to be accused of violating the stay in doing
25 that. That's all.

1 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

2 MR. KISSNER: Thank you.

3 MR. DESPINS: Just a clarification, Your Honor. So
4 we would have until September 1st to serve as well? Is that
5 what you intended or --

6 HONORABLE MAGISTRATE JUDGE DEIN: Yes, as of now, but
7 it's within your discretion. So you can serve before then.

8 MR. STANCIL: I'm sorry, Your Honor. I was confused.
9 I thought Your Honor was suggesting he should serve now -- I'm
10 just saying this from a case management perspective. The
11 sooner people are served, the sooner we can coordinate on how
12 to get everybody --

13 HONORABLE MAGISTRATE JUDGE DEIN: Correct, but he has
14 until August 2nd to serve, regardless.

15 MR. STANCIL: Correct. He has a list of all the lien
16 avoidance defendants in his pocket.

17 HONORABLE MAGISTRATE JUDGE DEIN: So I don't know if
18 I'm shortening his time. So the lien avoidance, I'm hearing
19 from counsel that he expects to serve sooner rather than
20 later.

21 MR. STANCIL: I haven't heard that. Is that correct?

22 MR. DESPINS: It's really the clawback that we
23 would --

24 HONORABLE MAGISTRATE JUDGE DEIN: And the clawback
25 does not need to be served prior to September 1st. The other

1 litigation, though, is stayed pending a case management order.

2 And I will actually issue an order on what I want in the case
3 management order when I have some time to think about it.

4 MR. CALLEN: One point of clarification, Your Honor.
5 You said that --

6 HONORABLE MAGISTRATE JUDGE DEIN: I didn't say that
7 much.

8 MR. CALLEN: No, I know you didn't. I know you
9 didn't. And I think that this covers it. When you said that
10 the stay to September 1st wouldn't apply with respect to
11 service, I just wanted to confirm that that wouldn't apply
12 with respect to service of our third party --

13 HONORABLE MAGISTRATE JUDGE DEIN: Correct.

14 MR. CALLEN: Thank you.

15 HONORABLE MAGISTRATE JUDGE DEIN: But you need to
16 make it clear, if you're serving anything, that the litigation
17 itself is stayed.

18 MR. CALLEN: Understood, Your Honor. We will. We
19 will.

20 HONORABLE MAGISTRATE JUDGE DEIN: Wait. Let's talk
21 about that. If you're going to serve that, do we need to
22 enter an order that says that the litigation is stayed and no
23 response is due -- I need to see what you're going to serve.

24 MR. CALLEN: Maybe the way to resolve it would be
25 this. If you would enter an order requiring, when we serve

1 | our Summons with the Complaint, that we also serve a copy of
2 | your order that you're planning to enter that stays this
3 | litigation until September 1st, we can serve that all in a
4 | single package.

5 | HONORABLE MAGISTRATE JUDGE DEIN: All right. So you
6 | need to do that.

7 | MR. CALLEN: Yes. We can absolutely do that, Your
8 | Honor.

9 | HONORABLE MAGISTRATE JUDGE DEIN: Okay. All right.
10 | Any more trouble I can get into in my two minutes up here?

11 | All right. Thank you.

12 | THE COURT: The next Agenda item is the status
13 | conference with respect to the PREPA 9019 motion proceedings
14 | that are scheduled for July. And I have some opening remarks
15 | to which I will expect counsel to react.

16 | To begin with, I want to note that my instruction to
17 | the government parties was to confer with potential objectors
18 | and submit a joint status report concerning issues that they
19 | wanted to address at this pretrial conference. The Joint
20 | Status Report that I received reads more, even in its amended
21 | incarnations, like a collection of legal briefs or position
22 | papers, and it does not appear to me to demonstrate a
23 | meaningful attempt to narrow issues or suggest a path forward.

24 | The arguments in the status report, many of which
25 | were repeated in the briefing concerning the two motions in

1 | limine, have lead me to conclude that there's a fundamental
2 | flaw in the structure of the disclosure process contemplated
3 | by the current schedule for the 9019 motion and in the opening
4 | documentation on the 9019 motion itself.

5 | The 9019 motion was filed without any proffer of
6 | factual material, much less a proffer of facts sufficient to
7 | make out a prima facie case for approval of the relief sought
8 | in that motion. And although the 9019 motion filing includes
9 | legal discussion, that discussion is largely conclusory, and
10 | it lacks the thorough analysis of the legal issues that would
11 | be required to underpin an order approving a 9019 motion that
12 | would compromise claims that are allegedly significant in
13 | value.

14 | So putting aside, for the moment, whether the motion
15 | should have been filed in that more fulsome manner, the
16 | current litigation schedule does not require that any
17 | declarations be filed until July 17. Frankly, I didn't
18 | realize that the government parties hadn't filed any
19 | declarations in support of their motion when I signed the
20 | Order setting the schedule. And I didn't notice the gap until
21 | I reviewed the 9019 motion in preparation for this hearing to
22 | see what anchors and guideposts there might be for resolution
23 | of the breadth and scope issues that are cued up in the Joint
24 | Status Report.

25 | And so it seems to me that the lack of an opening

1 road map to the manner in which the government parties intend
2 to justify, if you will, the 9019 relief that's being sought
3 has lead to the current quite inefficient process in which we
4 have parties arguing over discovery concerning topics that may
5 or may not seriously be raised by the way the motion is
6 advocated or which might be addressed, perhaps even adequately
7 by factual proffers by the movants.

8 And we have here opponents and potential opponents of
9 the RSA seeking very broad discovery in an attempt to put meat
10 on the bones of the 9019 motion. And as I read it, they've
11 essentially sought discovery on the full range of approaches
12 that might underlie the conclusory statements contained in the
13 9019 motion and the Proposed Order.

14 Therefore, I have concluded, subject to hearing
15 responses to this proposal from the parties present today,
16 that I will direct the government parties to file their
17 opening factual declarations and a supplemental memorandum of
18 law keyed to those declarations by the middle of next week.
19 Those papers must provide detailed factual proffers and legal
20 arguments that, if uncontroverted, would be sufficient to
21 demonstrate the movant's entitlement to the relief sought in
22 the 9019 motion.

23 Those papers, thus, will chart a potential pathway
24 for approval of the 9019 motion and put the Court in a better
25 position to assess the proper scope of the hearing and, if

1 any, necessary additional discovery in advance of the hearing.
2 For the avoidance of doubt, the additional submissions must
3 include discussion of precisely what relief the Court is being
4 asked to approve, the legal authority for such relief, and
5 facts, as opposed to conclusory assertions, that would justify
6 granting that relief.

7 And now I'm going to say that same thing about three
8 other ways, just to get the point across and share with you my
9 thinking. So I expect that the submissions will not simply
10 repeat the conclusory statements in the 9019 motion. And I
11 advise the government parties that the submissions shouldn't
12 take an aggressively narrow view of what is relevant to the
13 9019 motion, which contemplates approval of arrangements that
14 at this point appear to go beyond just setting a compromised
15 value of the secured claims asserted by supporting
16 bondholders.

17 Even if the Court were to adopt the narrow view
18 advanced by the government parties in their papers so far, the
19 Court will still need a record sufficient to establish the
20 benchmark range of reasonableness for potential recovery on
21 the bondholders' claims in order to determine whether the
22 discount to the claims that would be the result of the
23 settlement in the RSA falls within the range of
24 reasonableness.

25 And in the filings to date, the government parties

1 have relied principally on the fact that the RSA is a deal
2 struck by parties that were previously clearly at odds with
3 one another. And that may well be one indicator of
4 reasonableness, but I think that the scope and complexity of
5 the deal demands significantly more to demonstrate that the
6 compromise reached by the parties is fair and equitable.

7 For instance, the government parties have not sought
8 to shed any light on their worst case/best case risk analyses.
9 They haven't explained how they considered the larger macro
10 economic effects of the deal, or otherwise demonstrated
11 tangibly that they've given reasoned consideration of relevant
12 factors that would merit the Court's deference to their
13 business judgment.

14 Presumably there are analytical constructs underlying
15 the compromise represented by the RSA, but the 9019 motion
16 does not provide much detail or insight as to how or why this
17 particular compromise was achieved. So I'm not concluding
18 that no such showing meriting approval of the RSA is possible.
19 Far from it. I'm simply pointing out that no such showing has
20 been made at this point.

21 Additionally, the 9019 motion clearly contemplates
22 approval of a deal that is far more complex and has
23 ramifications for many more interested parties than a deal
24 that simply sets a claim amount. And the Court must be
25 persuaded that those aspects of the deal, such as imposing

1 charges, establishing priorities, making irretrievable
2 pre-plan payments and exempting matters from regulation under
3 local laws are within the Court's legal authority and
4 supported by relevant facts and analysis.

5 And while the 9019 motion argues that certain aspects
6 of the deal could be implemented by PREPA without Court
7 approval, the 9019 motion as filed asks for Court approval of
8 the RSA in its entirety, and therefore, seems to require the
9 Court to determine whether that transaction as a whole, in all
10 of its aspects, meets the standard for approval of agreements
11 under Rule 9019.

12 Each aspect of the Proposed Order that the Court is
13 being asked to approve must be adequately supported in fact
14 and law. And you will remember that we did something of a
15 back end exercise with this on the COFINA related motions, and
16 I had hoped not to end up in that position again. That's why
17 I'm trying to be as clear as I can today.

18 The government parties also have not provided much
19 detail as to the overall process required to implement the
20 RSA. It's not clear to me, at least from the face of the
21 motion, what further legislative and regulatory steps will be
22 required to implement the RSA. And frankly, that
23 informational gap makes it difficult for me to determine, for
24 instance, whether there is another proper forum for the
25 broader set of interested parties to have policy concerns

1 about things to speak to.

2 If people can go and lobby the legislature about
3 whether necessary legislation imposing charges or whatever
4 should be approved, yes, maybe that is a consideration that I
5 should account for in determining the scope of the proof here.
6 Also, it isn't clear to me which aspects of the deal the
7 Court's being asked to approve conceptually that will require
8 other changes to Commonwealth law versus what the Court is
9 being asked to declare valid, binding and effective on the
10 basis of an order issued by this Court.

11 This includes the description of modified charges and
12 rate structures with no clear explanation of what legal
13 authority there is for these changes. And so if the Court's
14 being asked to approve and thereby validate these changes as a
15 legal matter, the movants will have to provide legal authority
16 for the Court's ability to do that.

17 Certain opponents of the RSA have contended that
18 aspects of the proposed deal would prematurely decide aspects
19 of a potential PREPA plan of adjustment and materially and
20 irrevocably affect the rights of non-settling creditors. If
21 the government parties disagree that the RSA would have that
22 effect, they should lay out legally and factually their
23 position as to how the RSA will preserve the rights of
24 non-settling interested parties and have no constraining
25 effect on the ability of non-participants to litigate issues

1 that are normally material to confirmation that the government
2 parties contend are irrelevant to this 9019 motion practice.

3 To the extent the RSA would constrain such future
4 opportunities, movants should provide factual support and
5 legal authority justifying the Court's approval of the 9019
6 motion, notwithstanding concerns about the preemption of the
7 plan confirmation process.

8 To the extent that the Court's approval of the RSA
9 would provide parties with rights to pre-plan distributions,
10 the government parties should explain the legal and factual
11 basis for making such distributions, and the government
12 parties should also lay out the legal and factual basis for
13 the administrative claims and exculpatory provisions that are
14 included in the RSA.

15 I am proposing June 19 at noon, so that's a week from
16 today at noon, as the deadline for the government parties to
17 file the supplemental memorandum of law and supporting
18 declarations that I have described. Thereafter, all of the
19 parties, opponents and proponents, must promptly meet and
20 confer to determine what aspects of the currently pending
21 discovery and evidentiary motions can be resolved without
22 Court intervention, and file, by the following Monday, a
23 status report concerning what discovery and pretrial issues
24 remain, the necessity for any further hearings on such issues,
25 and a proposed schedule for any further discovery.

1 As to the meet and confer process, the Court requires
2 more than an 11th hour distribution of a template into which
3 parties can plug disparate arguments. There must be genuine,
4 timely interaction and an effort to reach realistic and
5 efficient compromises of any disputed issues, as the time
6 remaining for completion of discovery of a reasonable and
7 appropriate scope will have been shortened somewhat.

8 The 9019 motion must still be fully briefed by July
9 17 to give the Court an opportunity to consider properly and
10 appropriately the parties' various positions.

11 And so now, Counsel, I will hear your responses to
12 these remarks. Mr. Bienenstock.

13 MR. BIENENSTOCK: Your Honor, Mr. Despins requested
14 ten minutes for us to talk first. Would that be okay with the
15 Court or would you like me just to --

16 THE COURT: That's fine. A ten-minute break has been
17 requested, and so everybody be back in your seats at 3:25 by
18 the clock in the courtroom, which is about 13 minutes from
19 now. Thank you.

20 (At 3:11 PM, recess taken.)

21 (At 3:33 PM, proceedings reconvened.)

22 THE COURT: Please be seated.

23 Mr. Bienenstock.

24 MR. BIENENSTOCK: Thank you, Your Honor. And thank
25 you for the recess. Martin Bienenstock of Proskauer Rose,

1 LLP, for the Oversight Board, as representative of PREPA.

2 Your Honor, we had discussions both with Mr. Despina,
3 with Wachtell, for the fuel line lenders, and came to a number
4 of conclusions, part of which are requests that I'd like to
5 advise the Court of. And I'd then very briefly like to go
6 over some of the Court's comments about the RSA, because we
7 think all of the paper might have given the Court -- when I
8 say we, I'm just speaking for the Oversight Board and the
9 government.

10 We also -- the government was part of the discussion
11 outside. All of the paper might have given the Court the
12 wrong impression as to what the Court's being asked to do in
13 the motion. And I think it would be good for us to explain
14 our view to Your Honor, because that may have something to do
15 with how we go forward.

16 In terms of the schedule, what the government, the
17 Oversight Board, and the objecting parties, and I'm speaking
18 to the Committee and the fuel line lenders, would like to do,
19 is to use between now and this coming Monday to file a new
20 joint status report with Your Honor attempting to narrow the
21 issues and set a schedule, but also because we think that some
22 of the issues probably won't be consensually resolved, to see
23 if Your Honor could give us a follow-up hearing in New York
24 sometime next week to deal with the issues that will be
25 identified in the new joint status report.

1 We don't think, for several reasons, we can file the
2 declarations and brief, et cetera, a week from today simply
3 because each of our clients, and especially the government,
4 simply require a lot of time before they sign off on
5 declarations and things of that sort. And it will take more
6 time. That we will propose in the status report that we would
7 file Monday, if it's okay with the Court.

8 We're -- because our clients aren't here, we don't
9 have authority today to agree on new schedules, but I think
10 it's clear from what I've said, that a new schedule may arise
11 out of what we file Monday, because we know that the Court
12 needs -- needed to have everything briefed, et cetera, by the
13 dates the Court previously ordered. And if that turns out to
14 have to be delayed, other things may have to be delayed, but
15 we're not in a position now, we don't have authority now to
16 agree on changing dates.

17 In terms of the -- what we're asking the Court to
18 approve -- I want to go through the RSA very briefly, because
19 our view of what is at issue here is different from what we
20 think the Court thought it was. And we take full
21 responsibility for the fact that the Court could have come to
22 its conclusion because we're asking Your Honor to approve the
23 whole RSA.

24 It seemed like a good idea at the time, and it may
25 stay a good idea, but I want to explain what's inside it,

1 | because we don't think it's everything Your Honor thought it
2 | was.

3 | To the extent the RSA provides for payments to
4 | various creditors, to the extent it provides for the accrual
5 | of a claim, to the extent it provides for rates to be changed,
6 | if that were all it did, we wouldn't be in court in the first
7 | place, because since Congress didn't make Section 363 of the
8 | Bankruptcy Code applicable to Title III cases, we can use
9 | property without prior Court approval.

10 | And in fact, all along, as Your Honor knows in this
11 | case, the creditors would have been thrilled had we just
12 | raised rates earlier, and thought we should have, and there
13 | was -- no one on any side ever thought that Title III
14 | required -- would require Court approval for that. And it
15 | wouldn't. What a debtor charges for its services is what a
16 | debtor charges, and it doesn't need Court approval for that.

17 | To the extent Your Honor read the RSA -- so, well,
18 | let me go back to -- that's what we don't need Court of
19 | approval for. The reason we were asking for Court approval,
20 | and both sides, was this. Early in this case, as Your Honor
21 | saw, the Ad Hoc Creditors and others filed a motion for stay
22 | relief so they could request the appointment of a receiver.
23 | And they asserted in their pleadings, and they attached all
24 | the documents, that they are oversecured; that not only the
25 | net revenues, they said all revenues, but the covenant to

1 raise rates, the receivership remedy was all a package of
2 collateral; and when you put it all together, they were
3 oversecured.

4 The deal we've struck with them is that although they
5 were saying they're oversecured, a hundred percent plus
6 interest, they're getting approximately 67 percent of their
7 principal claim -- or 67 percent of their claim, and then if
8 that's paid, another note for ten percent, which is less
9 certain. So it's 67, plus maybe a little more.

10 THE COURT: And some time value of money provisions
11 in the form of administrative claims --

12 MR. BIENENSTOCK: Yes. Yes. Yes.

13 THE COURT: -- and payments.

14 MR. BIENENSTOCK: Yes.

15 Now, from the debtors' point of view, the government
16 parties' point of view, that is a great deal we should grab,
17 because what they're saying is they're willing to commit that
18 no matter what their claim is, the ultimate plan that's
19 confirmed only has to give them treatment giving them the 67
20 percent, plus maybe a little more.

21 So to limit their claim so that that's all they're
22 entitled to, that's why we wanted -- that's why, from the
23 government parties' point of view, we wanted Court approval,
24 to reduce their allowed claim to that. I think it was
25 reducing them to like the 67 to 77, 74 cents, whatever it

1 turns out to be.

2 THE COURT: Now, as I think it was probably the
3 Committee pointed out, and as I recall from last summer, the
4 debtor was -- or two years ago, whenever the receivership
5 motion was made, the Oversight Board and the government were
6 arguing or PREPA were arguing that the -- if there is
7 collateral at all, it's net revenues; there won't be any net
8 revenues; the rate raising covenant is not collateral in the
9 sense of the Code; therefore, the claim to be settled is worth
10 zero; and if you thought about it in this context, you'd say,
11 well, it's zero augmented by the always present chance of an
12 aberrant result, and so that would be the bottom end of a
13 range. Whereas the way you've articulated the rationale for
14 the deal here assumes that there's a very, very strong case
15 for all revenues are oversecured, and getting that discounted
16 by 25 to 35 percent is a great deal.

17 Let's wait for the phone.

18 Testing. Would our monitor please send a message as
19 to whether this can be heard?

20 Testing. Would our monitor please send us a message
21 if you can hear this? All right. Apparently we're back up.

22 And so what I was saying just before we dropped was
23 that there was another scenario last summer that might support
24 different economics and different assessment of the value of
25 the deal.

1 MR. BIENENSTOCK: Exactly, Judge. And I want to
2 emphasize, that was in the context of the Motion for Stay
3 Relief, and we were operating based on the jurisprudence,
4 which we would still be operating on. That -- you look at
5 that from the collateral value on the petition date or the
6 date they're asking for stay relief, and whether it's going to
7 decline from there, and we said the collateral value was zero.

8 That is a different inquiry, and the Bankruptcy Code
9 makes clear that valuations for stay relief purposes are for
10 stay relief purposes, are not necessarily valuations for
11 confirmation purposes. So with confirmation, if we're now
12 dealing with what is the value of their secured claim going
13 forward, we could argue it's quite small, and we may end up
14 doing that. And we have facts and law. But on the other
15 side, they're going to say things that -- I can't speak for
16 them obviously, but the arguments we would anticipate having
17 to deal with are: What utility keeps rates unchanged forever?
18 And why are you not raising rates? And if you do this great
19 transformation, you may have a greater net revenue than you
20 had before, because you're only doing it to improve things.
21 And on and on and on.

22 So there's a contest there. And basically, you know,
23 it's pretty clear, we came out believing that locking in the
24 67 plus was better than rolling the dice and having that
25 contest.

1 Another issue, though, that I wanted to try to
2 clarify goes back to what Your Honor is being asked to approve
3 by approving even the whole RSA. All the RSA requires and
4 allows us to do, us being the debtor, is to come to this Court
5 subsequently with a plan, and a plan that proposes the
6 treatment of the Ad Hoc Creditors and Assured in the manner
7 set forth in the RSA.

8 The key point is the Court is not being asked to say
9 at the RSA approval hearing that that treatment is legal or
10 will be -- can be part of a confirmed plan. All we're
11 committing to, the debtor is committing to the ad hocs, we
12 will propose that treatment that all in all gets you your 67
13 plus return, but it's going to be up to the Court to confirm
14 or not to confirm a plan that does that to your claim.

15 And as for the fuel line lenders, and the unsecured
16 claimholders who are saying what's left, the reason we said
17 that's really out of bounds for this hearing is if we don't
18 give them enough to make the plan confirmable, Your Honor will
19 deny confirmation.

20 So, I mean, we really took their issues as to what's
21 left as sort of a negotiating thing that we're supposed to put
22 something on the table. We will be doing that. We're
23 speaking to them, but we don't know what it has to do with the
24 RSA, because the Court's not saying that anything in the RSA
25 will ultimately be confirmed or approved or legal.

1 Of course all we're doing is we're getting the Ad Hoc
2 commitment that if we bring a plan that pays them their 67
3 plus, they will vote to accept that plan, and all the other
4 confirmation issues are left for confirmation.

5 THE COURT: But your RSA requires, and this may just
6 be the reality of the world, but it requires that you have
7 them over a threshold and in numbers that will give you a
8 consenting impaired class --

9 MR. BIENENSTOCK: We have that.

10 THE COURT: Yes. And so that does put the rest of
11 the objecting world into, you know, a particular position of
12 potentially being crammed down, and puts them in that
13 standing. And that's the way the Code works.

14 MR. BIENENSTOCK: Let me put it a different way,
15 Your Honor, because this may make the case. We don't need any
16 Court order to bring that plan to the Court. And we don't
17 need -- and as I said, the Court, when we bring it, can
18 confirm it or not confirm it.

19 We don't need any Court order to make payments
20 because of the 363 issue. We don't need a Court order to
21 change the prices. We want the Court order because we don't
22 want the Ad Hocs to say tomorrow, 67 is too low, now we want
23 77 or 87 or something like that. We don't want the deal to
24 fall out of bed. But approving the R -- so from our point of
25 view, approving the RSA locks them into accepting that

1 treatment.

2 Virtually everything else going on, other than the
3 exculpation -- but that's not a normal exculpation where all
4 officers and directors are exculpated for everything to do
5 with the reorg. That's a tiny, narrow exculpation of the
6 indenture trustee, who's being asked to sign a tolling
7 agreement on the lien challenge so we can bring it later.

8 And indenture trustees never want liability for
9 anything. But, I mean, the exculpation is as narrow as I
10 think anyone can ever find. And what it covers, I think, in
11 that situation is minor.

12 But that's the exculpation thing, and I -- well, I
13 shouldn't go further on that, but that's how narrow it is. A
14 confirmation I'm sure will put a larger exculpation in the
15 plan, but again, the Court's not being asked to approve that
16 now. And it will or won't when it comes up based on the facts
17 and law then.

18 As far as the local laws, the -- well, we think the
19 government, which is a party to all this, is going to get all
20 that's necessary to happen, as far as rates and legislation.
21 We think we could probably in a plan do it based on Section
22 305, which says this Court can interfere with governmental and
23 political powers with either Oversight Board consent or in a
24 plan. And the Court would have both. But we don't think
25 we'll have to test that here, because the government wants

1 this as much as the Oversight Board wants it.

2 So we don't think this Court would be going out on a
3 limb on any local law, certainly not in approving the RSA. If
4 in the plan we ask the Court to declare that something in the
5 plan preempts some law, okay, then that's an issue for
6 confirmation. And the Court will again agree with us or not,
7 grant it or not, but we're not asking for that now.

8 So that's why we're somewhat taken aback at how broad
9 the Court thought this was, because we're just locking in the
10 Ad Hocs not to ask for more.

11 THE COURT: Well, I got where I got today by, you
12 know, looking at two lanes of a road and the information that
13 I had in those two lanes of the road. You know, one was this
14 joint status report with very disparate views. The other was,
15 frankly, first looking -- reading your motion, looking for
16 declarations and not finding them. And then going through
17 your Proposed Order and seeing what sorts of findings of fact
18 and conclusions of law you were asking me to make in the
19 Proposed Order; and, you know, finding that a conclusion that
20 the entire RSA is fair and reasonable or whatever is supported
21 by an assertion in the motion that the entire RSA is fair and
22 reasonable, and, you know, valid and binding and wonderful.
23 So you might want to look at what rulings you're asking me to
24 make.

25 When I asked you that same question at the COFINA

1 confirmation about certain provisions being valid and binding
2 and wonderful, I'll say, because it's late in the day, the
3 answer on certain legal propositions was, well, you are
4 approving -- you can make this law essentially, because you
5 are approving the compromise that we reached. And in the
6 compromise, we're creating a structure that doesn't otherwise
7 exist. And we are invoking your power to make that happen.

8 And you know, there were further detailed legal
9 arguments as to why that should be, but those arguments only
10 came after I specifically asked for them twice. So I'm asking
11 you to be precise as to what you want me to do and how you
12 think I should get there. And that would give me some grip to
13 hold onto in evaluating arguments by a myriad of people from
14 other perspectives that, well, if what they really want you to
15 do is this, then they'll have to show that, and so on and so
16 forth.

17 MR. BIENENSTOCK: Right. Well, I assume -- I've
18 explained what the government parties want out of it. We want
19 to lock in the reduced secured claim. I assume the creditors
20 want out of it to have an order making us do what we promised
21 to do, which is to propose the plan giving them that treatment
22 and make the payments that we're already making, et cetera,
23 and raise the price as we said we'd do. All of which -- as I
24 explained earlier, if that were all, we wouldn't have to come
25 to the Court. It's just to deal with the claim that we do.

1 THE COURT: And so for instance, on raising rates,
2 when you say PREPA can do that on its own, you're not asking
3 me to approve an extraordinary and novel means of rate setting
4 that wouldn't otherwise involve some sort of consideration of
5 public input and all sorts of things?

6 MR. BIENENSTOCK: I don't believe so. I may stand
7 corrected by the government parties, but I think they had
8 enough elbow room in the current rate structure to move things
9 as they've done already during this case. They've lowered and
10 raised back rates, and they had a bunch of room to do things
11 like that.

12 THE COURT: It would be nice to know.

13 MR. BIENENSTOCK: Now, I assume that -- as I said,
14 I'm sure the creditors want us locked in to do what we say
15 we'll do under the RSA. And you know, if I were them, I would
16 have said what they said, which is ask for the RSA to be
17 approved. And I don't know if they'll move off that, but I
18 think that the -- it's the impact of what approval of the RSA
19 means that I wanted to explain to Your Honor.

20 There's only one thing in there that it really means
21 we're reducing their claim. And yes, we're going to be
22 ordered to do what we say we'll do, but we want to do that
23 anyway.

24 In any event, I don't want to take up more of the
25 Court's time. I wanted to explain what we thought we were

1 asking of the Court, and the problem we have with the schedule
2 and ask if it's okay if we submit a revised joint status
3 report on Monday.

4 Others may want to speak. I'm not sure.

5 THE COURT: Yes. Mr. Friedman has been up and down a
6 couple of times. So let me hear from Mr. Friedman and then
7 I'll respond to your question.

8 MR. BIENENSTOCK: Thanks.

9 MR. FRIEDMAN: Peter Friedman. We join with
10 Mr. Bienenstock. We think that for certain aspects, these are
11 within PREPA's powers. To the extent other approval is
12 necessary, we think it's the kind of approval -- for example,
13 I think there are some things that may require legislative
14 approval. Some things which arguably we'll have to assess,
15 whether they are present issues, but we don't think they are
16 Court approvals.

17 I also want to say, I don't think it will be a
18 surprise, we think that RSA issues, RSA approval, what's
19 necessary to get from the Court, what can be given here is
20 very different from other circumstances where the government
21 is not actually a party.

22 So I don't want to be again in a position where
23 somebody says, oh, you were silent when Mr. Bienenstock said
24 this can be done without Court approval or this can be done
25 under 305, and the Court can permit interference.

1 PREPA and AAFAF are both parties here. We think that
2 makes it categorically different. I don't need to get in a
3 debate about whether I'm right or wrong, but I just want to
4 lay that marker down and provide the information necessary for
5 you to at least think about where we come out in terms of who
6 has to approve what.

7 So thank you, Your Honor.

8 THE COURT: Thank you.

9 Yes, sir.

10 MR. KLEINHAUS: Good afternoon, Your Honor. For the
11 record, my name is Emil Kleinhaus from Wachtell, Lipton, Rosen
12 & Katz. I haven't been here in a couple of years. I'm happy
13 to be back.

14 THE COURT: Thank you. Good afternoon.

15 MR. KLEINHAUS: I represent Cortland Capital Market
16 Services, LLC, as successor administrative agent under a 2012
17 credit agreement that was originally entered by PREPA and a
18 group of Puerto Rico banks, with Scotia Bank of Puerto Rico as
19 agent. We formerly represented Scotia. We now represent
20 Cortland as an administrative agent on a facility of 550
21 million dollars in principal amount of fuel lines which are
22 loans that were made to PREPA to finance fuel purchases.

23 There's a separate facility owned primarily by funds
24 advised by Solus Capital Management of approximately 150
25 million, so in total, the fuel lines are approximately 700

1 million dollars of debt, and other than the bonds, are the
2 principal financial creditors of PREPA.

3 The fuel line lenders were fully involved in
4 pre-petition negotiations on an RSA, were a party to the
5 pre-petition RSA. Unfortunately, despite trying on multiple
6 occasions to engage with the Oversight Board and the
7 Commonwealth post petition, we have not been able to get
8 traction on a post-petition negotiation, and we are therefore,
9 constrained to object to the RSA.

10 Just a couple of comments in response to
11 Mr. Bienenstock. First of all, to Your Honor's comments at
12 the beginning of the hearing, we agree with the approach that
13 Your Honor has set out, because one of the things I was going
14 to say is we were getting set up here for a situation where in
15 light of how little the Oversight Board said in their opening
16 brief, particularly on the issues pertaining to my clients and
17 the 700 million they're owed, we were going to have a reply
18 brief in which the entire case was made there. And then we
19 were going to end up with lots of substantive submissions
20 right before the hearing, which is precisely what the Court
21 said at the beginning today you were hoping to avoid.

22 So I think an approach that requires a much more
23 robust position from the parties at the outset, which frames
24 the issues and allows the issues to be addressed in hopefully
25 an organized way, is certainly preferable to what's happened.

1 So we agree, and Your Honor was directing it anyway, but I
2 note our agreement with that.

3 To Mr. Bienenstock's comments about the scope of the
4 hearing, I'm not going to repeat what was in our section of
5 that Joint Pretrial Report, but I do want to point out that in
6 addition to the objections that the Creditors' Committee will
7 be raising to the settlement, and we expect to join in some or
8 many of those objections, we have a very particular problem
9 with this RSA. And the very particular problem is that our
10 fuel line is intended to be and was senior to the bonds from a
11 priority perspective under the pre-petition agreements, under
12 pre-petition resolutions, under pre-petition offering
13 memoranda to the bonds.

14 And we believe that this RSA, contrary to what the
15 Oversight Board has submitted, does not leave the fuel lines
16 unprejudiced and with their rights reserved for a plan, but
17 rather, in certain ways that can't be reversed, essentially
18 subverts that priority scheme by, number one, allowing
19 payments, significant payments out in the opposite of the
20 priority scheme, because what the priority scheme said, if
21 PREPA raises rates, that has to be used first for current
22 expenses, and everybody agreed that the fuel lines were a
23 current expense. And only after current expenses are paid can
24 the bonds get paid. This RSA suggests, dictates that the
25 opposite is going to happen.

1 There's also a most favorite nations provision in
2 this RSA which prevents the Oversight Board from entering into
3 any agreement with our clients, the fuel line lenders, on
4 terms that are better than the bond terms, which again locks
5 in the Oversight Board not to respect our priority.

6 There was even a provision in this agreement that
7 says that the Oversight Board can't enter into any kind of
8 restructuring agreement with the fuel lines without the
9 bondholders' approval, and there we believe the Oversight
10 Board is essentially giving the bondholders a veto over future
11 negotiations which we hope to have with them.

12 And Mr. Bienenstock said no approval is needed.
13 There is a significant body of case law that we intend to
14 invoke in our objection, starting from the Supreme Court,
15 going down to the Circuit Courts, in cases like *Iridium* and
16 *Aweco*, and a number of cases in this district which we cited
17 in the Pretrial Report regarding situations in which, outside
18 of a plan of reorganization, distributions can be made,
19 priority rights can be not honored, and essentially the
20 parties' rights that would otherwise be determined in the plan
21 context are instead determined in the context of a settlement.

22 If the Oversight Board's position is going to be that
23 despite all of the plan provisions in PROMESA, the government
24 can simply disregard priority rules and essentially lock in,
25 dictate the provisions of a plan through a pre-petition

1 settlement, that's a legal dispute that's going to have to be
2 resolved by this Court, because we certainly do not agree with
3 that. And I didn't want to let that comment pass without
4 responding.

5 Lastly, Your Honor, to the point about the way
6 forward, Mr. Bienenstock told me before he got up about a
7 pre -- an additional report being submitted on Monday. We
8 don't have any problem with that, but we do think if there's
9 going to be an additional report, we should avoid the
10 situation we had in the last report, which is round two of the
11 parties just stating very disparate positions.

12 What I hope we can do is actually zero in on what the
13 Oversight Board's position's going to be on this hearing. And
14 on the priority issue in particular, we've been trying to get
15 clarity on that, because if what the government parties are
16 saying is they are not going to put priority at issue at this
17 hearing, and moreover, they're going to assume the fuel lines'
18 priority will be respected in the context of this hearing and
19 argue that this can be reviewed anyway because, for example,
20 there's no need for Court approval, that's one thing. That's
21 a targeted, narrow hearing where the priority issue is
22 reserved for another day. But we're entitled to argue that we
23 have priority, and this settlement violates that.

24 But the Oversight Board's not contested that at the
25 hearing. Instead, what they're arguing is this should be

1 approved regardless of priority. But in contrast, if the
2 Oversight Board members want to make this hearing into a
3 dispute that would otherwise be in a plan context or an
4 adversary proceeding, and without objecting to our proof of
5 claim which set forth the current expense position very
6 clearly, without bringing an adversary proceeding, without a
7 plan fully litigating rights that would otherwise be
8 determined in a plan context, then we're going to have to be
9 entitled to take appropriate discovery on that issue, and this
10 becomes a much messier hearing.

11 And for due process reasons and otherwise, we're
12 going to have to make a full case and we're going to be back
13 in front of this Court and back in front of Judge Dein, as we
14 were going to be on Friday, making our case as to what we need
15 to have a fair hearing. So I'll stop there.

16 I also wanted to confirm, I understood Your Honor to
17 be saying in light of the process that's going to go forward,
18 we will not have the hearing with -- on the Motions to Compel
19 on Friday. I'm open to discussing that. I just wasn't
20 totally clear. That's a reasonable outcome given Your Honor's
21 direction. I just wanted to make sure that was clear one way
22 or the other.

23 THE COURT: Thank you.

24 And as to that last point, my intention, and jointly
25 intended with Judge Dein, was to see where we come out with

1 respect to this recut of the schedule and to -- she was going
2 to come back up here, and entertain a discussion as to whether
3 there was anything useful to be done with a Friday hearing
4 date and whether there is certain discovery that, everyone,
5 you agree should go forward, whether that's controversial or
6 not and whether the Friday hearing is necessary.

7 And so I think I will still leave that question to be
8 answered after this discussion is completed.

9 MR. KLEINHAUS: Thank you.

10 THE COURT: Thank you.

11 Mr. Despins.

12 MR. DESPINS: Good news, Your Honor. I will not say
13 very much. I know it's late in the day.

14 Unfortunately, I disagree with pretty much everything
15 that Mr. Bienenstock said. That's all I need to say. I'll
16 keep my powder dry on that.

17 In terms of the hearing on Friday, I don't think it
18 makes any sense to go forward with that given what has
19 transpired. And I don't think the government parties disagree
20 with that, but they'll speak for themselves. Thank you.

21 THE COURT: Thank you.

22 Yes, ma'am.

23 MS. MENDEZ COLBERG: Good afternoon, Your Honor.

24 Jessica Mendez Colberg on behalf of UTIER and Sistema de
25 Retiro de los Empleados de la Autoridad de Energia Electrica,

1 the pension plan, or the PREPA.

2 Just briefly, Your Honor, we wanted to state that we
3 are in the same position as the fuel line lenders in terms of
4 the priority that the RSA prejudices in terms of UTIER and the
5 members of the pension system due to the statement of the
6 trust agreement of 1974 that states that the authority has to
7 convey all the general funds that will be used first for the
8 payment of the current expenses. And in the definition of
9 current expenses, it is included, the payment of the Pension
10 Plan.

11 So we stand at the same position of the fuel line
12 lenders, and we agree that the information that the Court has
13 requested from the government parties to supplement the
14 motion, the 9019 motion, is necessary to address that issue.

15 THE COURT: Thank you.

16 Did anyone else wish to be heard? Yes, sir.

17 MR. CINTRON GARCIA: Good afternoon, Your Honor.
18 Carlos A. Cintron Garcia representing Somos, Inc.

19 Your Honor, I wanted to be brief. The Oversight
20 Board had issued a motion in limine seeking to exclude expert
21 testimony by proposed interveners in this case. And regarding
22 your initial statements regarding this motion in limine, I
23 wanted to clarify your position on this motion.

24 We propose that our interventions are crucial to this
25 process, as you well stated and we agreed that this process of

1 the 9019 motion must consider crucial matters as to the impact
2 on consumers where -- because this issue is in very -- it's
3 crucial to whether this settlement will be, realistically
4 speaking, even feasible.

5 We -- if this settlement is predicated on consumers
6 actually complying with whatever means of rate revision which
7 might have to be taken, it would require that consumers
8 actually play their part in these rate revisions. If
9 consumers do not take a part in or comply with rate revisions,
10 this settlement by all means is unfeasible. It's untenable.

11 Our proposed expert, Jose Almeida, is prepared to
12 testify on how the set -- the RSA will affect consumers and
13 how this RSA will be a great prejudice to consumers, to the
14 point where the settlement is untenable.

15 THE COURT: Thank you.

16 For clarity, I did not say that the impact of -- that
17 I've concluded that the impact on consumers is necessarily
18 within the scope of 9019. I raised that as an example of an
19 issue as to which the government might say, for instance,
20 well, there's another forum where those concerns can be
21 raised. It's not this one, for a variety of reasons. But at
22 this point, again, I didn't have enough information from the
23 government parties as to what they are trying to accomplish
24 before this Court, as opposed to, in other ways, to be able to
25 assess that or to assess their business judgment on issues on

1 which they're asking me to defer to their business judgment.

2 The short answer on the motions in limine is that I
3 am going to hold those under advisement pending the further
4 submissions, but the people against whom the motions in limine
5 have been filed should not work on the assumption that I
6 expect to permit them to intervene at the level of presenting
7 testimony or examining witnesses.

8 As everyone knows, and as the First Circuit has said,
9 the Court has discretion in shaping intervention to the extent
10 intervention is allowed. And so I think it would be wise for
11 the parties who seek to intervene, to whom objection has been
12 made, to think about perhaps some briefing of common issues.

13 There were some overlaps in the submissions that I've
14 seen. And it may be that to the extent I allow intervention,
15 it may be the submission of a brief, perhaps some brief
16 participation and oral argument at the 9019 hearing. But in
17 order to make that sort of final determination, I need to have
18 a much better picture of what the scope of the hearing will
19 be. And I need these additional submissions in order to be
20 able to do that.

21 MR. CINTRON GARCIA: Understood. Thank you, Your
22 Honor.

23 THE COURT: Thank you.

24 Someone has come from the back. Yes.

25 MR. BEREZIN: Good afternoon, Your Honor. Robert

1 Berezin of Weil, Gotshal and Manges on behalf of National
2 Public Finance Guarantee Corp. Your Honor, I'll be very
3 brief.

4 National is PREPA's single largest creditor. We've
5 been working with the government parties, as well as the
6 Board, to see if we can join this deal and resolve our
7 objections. At present, we find ourselves shut out of the
8 RSA, not by the Board or by AAFAF, but by a certain creditor
9 group due to rights they were able to negotiate in our absence
10 during the negotiations.

11 So at this time, we must reserve our rights as an
12 objector, and while we are going to continue our work, we
13 wanted the Court to be aware that National, as a secured
14 creditor and as a bondholder, certainly has objections that
15 are unique from the others. And again, we hope to resolve
16 them, but we wanted to reserve our rights for the record and
17 just make sure you understood where we stand at this juncture.

18 THE COURT: Thank you.

19 MR. BEREZIN: Thank you.

20 MR. AGRAIT BETANCOURT: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. AGRAIT BETANCOURT: Fernando Agrait. I represent
23 both Windmar Renewable Energy and ICSE, and several not for
24 profit entities, all related to the general economic situation
25 in Puerto Rico; and in particular, the impact of PREPA's

1 reorganization and the RSA and their operations.

2 I am highly satisfied with your statement on the need
3 for additional information which will make possible for this
4 Court and for those of us who are requesting participation to
5 know where we are going and where do the government parties
6 want to go. What worries me at this point is, even under your
7 statement by Wednesday we have a new report, or by the
8 government parties' statement that they want us to submit a
9 sort of rehash joint report for Monday, we don't have a sort
10 of route that we're going to follow.

11 I mean, it's already late on Wednesday. It's -- you
12 said that you wanted real interaction and not just circulating
13 a form to be filled by each party. So I would very much like
14 from you, the Judge, a specific instruction to different
15 parties on how we are going to reach what you expect us to do
16 for next week. Because in my case, I was notified for the
17 first time by the government parties Friday at 3:30, which was
18 half an hour before the time for filing the joint report.

19 On Windmar's side, which is even a participant in the
20 negotiations going outside the courtroom, we were never
21 notified to be part of the joint report. So I don't think we
22 should go out today and just expect all of the lawyers and all
23 the parties to start calling each other and sending e-mails to
24 establish the road map.

25 THE COURT: Thank you.

1 And so, Mr. Bienenstock, first, I just want to be
2 clear that even if it's on a different schedule, I need front
3 end elucidation and substantiation of the factual and legal
4 case. And these objectors, I expect, will need that to
5 finally come to grips with their positions on scope and
6 discovery and that sort of thing.

7 I will grant your request to do true conferring and
8 provide me a true joint issue identification and proposed
9 scheduling report on Monday, but as the last speaker observed
10 quite passionately, we need some agreement on the process that
11 will be undertaken between here and Monday, so that I don't
12 just get another collection of how people disagree, because I
13 know they disagree already. That doesn't really help me.

14 So what do you propose to do in that regard,
15 Mr. Bienenstock?

16 MR. BIENENSTOCK: We'll obviously speak with the
17 parties, the objecting parties. I don't know if we're going
18 to be able to convince anyone that their proposed scope of the
19 hearing is wrong without Court rulings.

20 For instance, I mean, as Mr. Kleinhaus knows, he
21 doesn't have a document giving him seniority. And even if he
22 did, we'll either have a plan that treats him so that the
23 Court confirms it or not. So we just don't see what he -- why
24 he should find out what's left or whatever. That's
25 negotiation, which we want to have with him.

1 THE COURT: So what's the point of whatever it is you
2 want to give me Monday, besides perhaps trying to change a
3 timetable?

4 MR. BIENENSTOCK: Well, partly it's changing the
5 timetable to be able to give Your Honor the declarations and
6 brief Your Honor asked for. Partly, Your Honor, we might make
7 some progress with some of the parties on narrowing the issue.
8 I just didn't want to represent to Your Honor that we're going
9 to give you a fully agreed like pretrial schedule on scope and
10 everything, because I don't know that the parties will see eye
11 to eye.

12 Today -- I mean, today we were surprised that Your
13 Honor thought that we were asking you to approve so much more
14 than we thought we were asking you to approve. And as I said
15 before, I get it, because we asked you to approve the whole
16 RSA, but hopefully now it's clear how little there is in the
17 RSA that really requires Court approval.

18 THE COURT: That will be clearer to me when I see
19 that in writing and a skinnied up proposed order. I heard
20 what you said, and I understood many of the words. I still
21 don't frankly have a firm concept of what you believe you need
22 me to do to keep your supporting parties on board and how
23 that's different from what you appear to have asked me to do
24 in your -- the Proposed Order I currently have before me.

25 If I'm being asked to make the same determinations,

1 | whether it's to make people happy or because the law would
2 | require it, in any event, I'm still being asked to make
3 | certain determinations, and I don't have a pathway that
4 | explains to me the legal basis for doing it.

5 | So as to -- you had mentioned I think when you first
6 | made this proposal that you intended to share more of the
7 | government parties' thinking about what's really being sought,
8 | and you've done that here orally. Did you have in mind to do
9 | that to a greater degree with the objecting parties in order
10 | to make some different scope proposal or substantiate your
11 | scope proposal, together with the timing proposal, to then
12 | distribute and take comments back or what did you want to do?

13 | MR. BIENENSTOCK: Well, I think clearly, based on
14 | Your Honor's remarks today, the government parties would be
15 | wise to skinny down the Proposed Order and/or add to it in
16 | respect to the things we're not asking the Court to do. So
17 | spelling out the meaning of approving the RSA to a very -- so
18 | it's very limited. And that might convince some of the
19 | objecting parties that the hearing should be more narrow.
20 | But, you know, frankly, there's always the possibility that
21 | they just saw this as an opportunity to hold it up until they
22 | have their deals. And we would love to have deals with them,
23 | but I don't know if that will happen before the RSA comes on
24 | for approval.

25 | So I don't know if it will make the objecting parties

1 happy when we -- or change their positions when we -- if we
2 narrow down the Proposed Order, but we're certainly going to
3 give it a try.

4 THE COURT: Well, and of course the immediate issue
5 here is the scope of the hearing, and obviously if you had
6 everybody on board with a deal, it would be a different kind
7 of hearing. But assuming that there will still be contention,
8 I still have to deal with what we're going to have in terms of
9 pre-hearing discovery, what we would have in terms of witness
10 testimony, how long that would take, who gets to speak. And
11 that still needs to be informed by your submissions. And it
12 may be that your opponents' positions as to what discovery
13 they're going to continue to press for and whether they are
14 going to continue to contend that they want to put on X, Y and
15 Z witnesses may or may not change.

16 So I don't want to waste any time here, so let me
17 propose this. By midday Friday, the government parties should
18 distribute to every objector and target of a motion in limine
19 whatever you're willing to provide in terms of a firmer road
20 map of what you would expect to substantiate in terms of what
21 is being asked for and the rationale for getting there in your
22 subsequent submission of declarations and supplemental
23 memorandum of law, plus your proposed timetable for the actual
24 filing of the declarations and supplemental memorandum of law,
25 and whatever other shifts in the timetable you propose to

1 make.

2 And I suppose you can include in that distribution
3 two requests: One, for parties to have the opportunity to
4 respond back as to whether this information changes their view
5 as to the contested discovery issues that have been
6 identified; and second, whether that view has been changed or
7 not by this distribution, whether there are particular
8 objections to the timetable changes that you are proposing.

9 And then I suppose you react to that, and maybe you
10 have one more round of e-mailing with deadlines so that
11 everybody has had an opportunity to speak their piece by call
12 it noon Monday. And by close of business Monday, you file
13 this joint statement. And that's a very rough concept of how
14 you could do it, but that's a way it could be done.

15 Mr. Friedman's coming up.

16 MR. FRIEDMAN: Your Honor, it's Peter Friedman.

17 I think what you're proposing is going to result in a
18 multiple iterative process. I think we'll be able to provide
19 together some of that by Friday. I think the bulk of what
20 we'll be able to accomplish in this next submission will be
21 scheduling oriented, and then it's possible that we will wind
22 up after we actually submit whatever we submit in response to
23 your detailed requests.

24 Then being able to have a further and probably more
25 meaningful pretrial discussion, because --

1 THE COURT: And that's why I had proposed filing the
2 further information, and then have the pretrial discussion.
3 It's -- you all have asked me for this interim step.

4 MR. FRIEDMAN: So I think we'll see where we can get,
5 and we will commit to together providing the information we
6 can provide. But it may be that this is an interim step and
7 there has to be a second round of it.

8 But to the extent we can start the process and wind
9 up, at a minimum, with a better engagement than last time
10 together, that would be useful. It may be that people say,
11 look, in the interim 48 hours, really all we can comment on is
12 timing. That may happen. And it may be the effort to try to
13 do something as an interim step doesn't get us nearly as far
14 as we'd like, and that it does have to wait until after we do
15 the detailed submissions you suggested.

16 So I guess we'll do our best and we'll see. Maybe us
17 having thought that we could do something in the next 48 hours
18 on that is overly ambitious, but it's worth a try.

19 THE COURT: Okay. So make sure everybody you know
20 who's concerned is in the loop.

21 MR. FRIEDMAN: Okay.

22 THE COURT: And that that happens as soon as possible
23 so that people aren't being presented with a *fait accompli* at
24 the 11th hour.

25 MR. FRIEDMAN: I agree. I guess what I'd ask is

1 counsel, if we file the motion -- if people know where to find
2 me -- we'll obviously do outreach, too, but if you want to be
3 on this distribution, please e-mail me so that we don't have
4 any slips.

5 I think people know where to find me. Just send me
6 an e-mail and we'll match it up to a master list. But I just
7 want to make sure that we don't inadvertently forget anybody.
8 And I will take on the responsibility of making sure that that
9 happens, but I would ask that people e-mail me.

10 THE COURT: Thank you, Mr. Friedman.

11 MR. WHITMORE: Your Honor, Clark Whitmore from the
12 lawfirm of Maslon LLP, as the Indenture Trustee.

13 I think Mr. Friedman just anticipated my request.
14 The U.S. Bank, as trustee, has been directed to join in the
15 motion and will -- exculpation is one of the subject matters.
16 And so we're interested and would very much appreciate being
17 included in the distribution and discussions that are going
18 on.

19 THE COURT: Very good. So e-mail your e-mail address
20 to Mr. Friedman.

21 MR. WHITMORE: Yes. Absolutely. Thank you.

22 THE COURT: Thank you.

23 Mr. Bienenstock.

24 MR. BIENENSTOCK: Your Honor, we wonder if the Court
25 would change the close of business Monday to Tuesday noon?

1 This is just hard to do that quickly, and we're all going to
2 be traveling either tonight or tomorrow morning, so it doesn't
3 leave really much time before Friday and Monday --

4 THE COURT: All right. You're the one that said
5 Monday. Tuesday noon.

6 MR. BIENENSTOCK: Okay. Thank you, Your Honor.

7 THE COURT: Okay. Thank you.

8 So does anybody need Judge Dein to come up here to
9 talk about whether there should be a hearing Friday or can we
10 simply assume there won't be a hearing Friday?

11 Okay. Raise your hand if you want to have a hearing
12 Friday. Okay. Seeing none --

13 HONORABLE MAGISTRATE JUDGE DEIN: (Raised hand.)

14 THE COURT: Okay. Judge Dein, glutton for punishment
15 --

16 HONORABLE MAGISTRATE JUDGE DEIN: Oh, well, I --

17 THE COURT: All right. Then --

18 HONORABLE MAGISTRATE JUDGE DEIN: Can I just --

19 THE COURT: Yes. Come up here, please.

20 COURTROOM DEPUTY: All rise.

21 HONORABLE MAGISTRATE JUDGE DEIN: I'm certainly not
22 going to add a hearing, and I think it makes a lot of sense to
23 wait until the scope of the RSA hearing is defined, but some
24 of the discovery issues it seemed to me should be done on
25 submission. There are some legal issues that were raised. I

1 just ask the parties to think about that afterwards when you
2 get into the discussion as to the scope of discovery, whether
3 or not, excuse me, some of it should just be done on
4 submission on some legal rulings. Okay? But I'm canceling my
5 Friday afternoon hearing.

6 THE COURT: Please be seated.

7 All right. So I believe that this concludes today's
8 Agenda. Seeing no one protesting that, this conclude today's
9 Agenda.

10 So the next scheduled hearing date is Wednesday, June
11 26th, in Boston, with a video connection with San Juan. I
12 think that's about the GO Procedures Motion.

13 HONORABLE MAGISTRATE JUDGE DEIN: Right. We'll talk
14 about --

15 THE COURT: Yes.

16 And so as of now, that's what's on the calendar. And
17 there's also a June 28th date that's just been put on the
18 calendar.

19 HONORABLE MAGISTRATE JUDGE DEIN: In New York.

20 THE COURT: In New York. So there may be some
21 switching around. Keep flexible that week, folks.

22 Mr. Despins.

23 MR. DESPINS: It might be helpful, Your Honor, if one
24 of your law clerks could e-mail the Board or us with a list of
25 blackout dates where you're not available in August. We're

1 not saying we're changing dates yet, because they don't have
2 authority, but I think it helps people figure out if we know
3 those dates are out.

4 THE COURT: Most of them. August is not a good
5 month. I am always on the radar. I think I am the one person
6 in this room who has been literally on the radar for the past
7 two years and a month, and will be indefinitely because of
8 this lovely statute that we're all operating under. But for
9 staffing and other reasons, August would be a difficult month
10 to conduct substantive court proceedings.

11 So Mr. Bienenstock, did you want to say something
12 before I make my usual closing speech?

13 MR. BIENENSTOCK: No. No, Your Honor.

14 THE COURT: Okay. So again, as usual, I thank the
15 court staff here in Puerto Rico, in Boston and New York. And
16 today especially, Lisa Ng, who has operated as deputy here;
17 Sarah De Jesus, who has been doing it in New York; the IT and
18 AV staffs of the District of Puerto Rico and the Southern
19 District of New York in contending with our various
20 communications issues today; and our ace court reporter, Amy
21 Walker, who keeps up with all of us, and for that, I'm very
22 grateful.

23 And I'm grateful to the entire PROMESA team for their
24 work in preparing for and conducting today's hearing and their
25 superb ongoing support of the management and administration of

1 | these very complex cases.

2 | And so with that, keep well, thanks and safe travels
3 | to all.

4 | (At 4:36 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 196 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain and the
8 Honorable United States District Court Magistrate Judge Judith
9 Gail Dein on June 12, 2019.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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